

# DECLARATIONS AND PLEADINGS

In the most usual ACTIONS brought in  
the several Courts of *King's-Bench* and *Common-  
Pleas* at *Westminster*,

VIZ.

In ACTIONS of

CASE	{	SCANDAL of Peers respecting their Honour.	{	Express'd	{	Written.
		SLANDER of Common Persons respecting their Life, Liberty, Estate, Office, Reputation, &c.				Printed.
		On Bills of Exchange, Policies of Af- surance, &c.				and Parol.
		On Promises or Contracts				ImPLY'd.
		For { Non-feasance and Negligences. Mal-feasances and Torts, &c.				

ACCOUNT against *Bailiffs, Receivers* and *Guar-  
dians, &c.*

COVENANT on *Agreements, Leases, Grants, &c.*

DEBT on *Bonds, Bills, Notes, Judgments, Stats. &c.*

EJECTMENT of *Manors, Lands, Houses, &c.*

TRESPASS to the Person, his *Wife, Servant,  
Cattle, Goods, Houses, Gardens, Fishery, Close,  
Church, &c.*

ALSO

(Incidentally) shewing the *Forms* of Proceedings as  
well in the *Petty Bag-Office* in *Chancery*, as in  
*Corporation Courts, &c.*

By *W. BOHUN* of the *Middle-Temple, Esq;*

In the SAVOY.

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DECLARATIONS

PLEADING  
THE

PREFACE

THIS is the Observation of one of  
the wisest Authors that ever  
illustrated Truth, that the  
pleasing of our  
Species of Instincts  
whose Luxuriant Power by a  
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tain



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THE  
PREFACE.

**T**IS the Observation of one of the wisest Authors that ever illustrated Truth, That, the blazoning of our own Glory is a Species of Infamy; and surely he whose Luxuriant Pen labours by a Preface to recommend the Worth or Excellency of his Book, comes little short of him who endeavours to darken Counsel by Words without Knowledge; For as no Law, either Human or Divine, did ever allow any Man to exercise a Judicature in his own Case, so he who Usurps that Authority with regard to his own Work, will be esteem'd by others as guilty both of Folly and Injustice; 'Tis cer-

## THE PREFACE.

tain all our Actions are lyable to the Censure of others, and must bear a Character correspondent to common Opinion, and not as they are in our own Eyes.

I shall therefore waive all Eulogiums on the ensuing Collection, and in this Place only in Brief, inform the Reader of some few Observables, which are reducible to these Three Heads, viz. the Motives, the Method and the Matter of the Book before us.

I. The Motives were the same as formerly induced the Author to publish some other Tracts of the like kind, while the Processes and Proceedings at Law were in Latin, and which on Occasion of the late Act, That Proceedings in Courts of Justice shall be in the English Language, prompted him to publish the English Lawyer, &c. And as the Motives of composing and publishing

## THE PREFACE.

*publishing that Book will best appear from the Preface thereto, so he here avers and avows, the same Motives, (viz. The Publick Benefit) to be the principal Motive of publishing This.*

II. *As to the Method of the Work it will be easily seen, not only from the foregoing Title Page, wherein a general mention is made of Declarations and Pleadings in the several Actions and Branches of Action here treated off; But a very exact Account of each Branch may be seen under the respective Divisions of the ensuing Table.*

III. *And as to the special Matters contained in the Book, they will be readily found by perusing the same Table, which is therefore recommended to the Reader before he enters on the Perusal of the Book itself. In which Perusal he is desired to take Notice of these Five Particulars, viz.*

*First,*

## THE PREFACE

First, That the Precedents here collected are not only the most Modern and the best approved ; but also are generally such as have undergone the strictest Examination in the several Courts of B. R. and C. B. respectively ; as will appear by their having been argued and adjudged upon Special Pleas and Demurrers, wherein the most material Objections, both as to Form and Substance have been answered and resolved by those respective Courts.

Secondly, That the same Precedents are for the most Part taken either from the best modern Books of Entries Extant, or selected from the most remarkable Rolls and Records as have been lately debated and adjudged in the said Courts ; the Errors of the former having been carefully corrected, and the Copies of the later duly examin'd ; and their several  
Forms

## THE PREFACE.

Forms reduced and adapted to the present Method of Practice.

Thirdly, That as to those of the former Kind, the respective Pages of the Books from whence their Forms are deduced are cited in the Margin; and as to those of the later Sort, the Term and the Number Roll when entered, is often inserted, in order to direct the Reader to the Record itself, whereby he is enabled to compare the respective Translations with their Originals.

Fourthly, That many marginal Notes and References, and other Explanatory Observations are inserted in the Book, in order to illustrate and explain not only the Nature of the several Titles of Actions, and the particular Declarations and Pleadings herein collected; but also to shew the several Differences and Distinctions of Words and Phrases proper to be used

## THE P R E F A C E

*used in translating Latin Forms into the English Language, whereby the Reader will be enabled to select and adapt such Words and Phrases as will best Suit the Circumstances of his Case.*

*Finally, That in divers of the Precedents here collected the several Parts of the whole Record, (viz. the Declaration, Plea, Replication, Rejoinder, Demurrer and Joinder; Or the Issue, award of the Venire, Postea, Continuance and Judgment) are here inserted successively, and in their natural Order. The Author in this Particular conceiving that the several Parts and Branches of Pleading would be better known and understood by shewing their Connection in the same entire Record, than if the same Record was broken and distributed into divers Parts or Branches; As the View of an organized Body in its connected Symetry, will most surely afford*

# THE PREFACE

afford a more clear and distinct Idea  
of the Use and Aptitude of its Parts,  
than when the same Body is exhibited  
by broken and divided Parcels.

The above Particulars are (with  
the Author's good Wishes) recommend-  
ed to the Readers candid Censure and  
Consideration by

of the whole Record, (viz. the Decla-  
ration, Plea, Application, Rejoin-  
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vided into divers Parts or Branches;

As the View of an organized Body  
unconnected Symmetry, will most fully  
afford

W. B.

Note;

and other Proceedings

*And in the Margin of pag. 7. for Subordination read Subornation. Also the Form of the Original at pa. 274. ought to have been inserted at pa. 66.*

inserted at pa. 66.

# A TABLE of the De- clarations, Pleadings, and other Proceedings contained in the ensuing Treatise.

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DECLA-

# DECLARATIONS

(and PLEADINGS, &c.) in  
B. R. and C. B.

In ACTIONS for WORDS.

*A Declaration for scandalizing a Peer of  
the Realm (reciting the Stat. 2 R. 2.)*  
Scand. Mag.

Surrey to wit. **J**AMES Earl of B. and Duke of O. in the Kingdom of Ireland, Steward of the Household of the Lord the now King, and one of the Peers and Lords of Parliament of this Kingdom (of Great-Britain) who sues (prosecutes) as well for the Lord the King as for himself, complains against *W. H.* in Custody of the Marshal of the Marshalsea of the said Lord the King; for that to wit, That whereas in a Statute made in a Parliament held at *Gloucester*, in the second Year of the Reign of the late King of England, *Richard* the Second after the Conquest, it was amongst other Things ordained and strictly prohibited, that none be so hardy (daring) to contrive (devise) speak,  
B or

Scand. Mag.  
by the Earl of  
B. See Lilly's  
Entr. 494.

Recital of the  
Stat. 2 R. 2.  
c. 5. See 4 Co.  
12. Cro. El. 1  
Cro. Car. 135.  
1 Jon. 194.  
Dyr. 155.  
1 Leon. 287.  
3 Bul. 225.  
12 Co. 134.  
2 Inst. 227.  
or Kelw. 26.

## Declarations, &amp;c.

*Scan. Pag.* or tell any false News, Lyes, or other *such false Things*, of (any) the Prelates, Dukes, Earls, Barons, and (or) other Nobles and Peers of the Realm of *England*, nor of the Chancellor, Treasurer, Clerk of the Privy-Seal, Steward of the Household of the Lord the King, Justices of the one Bench, or the other, or of other great Officers of the Realm aforesaid, whereof Discord or any Scandal might arise within the same Realm: And that whosoever did the same, should incur and have the Pain at another Time thereof, ordained by the Statute of *Westminster* the first; as in the same Statute is more fully contain'd. Yet he the aforesaid *W. H.* not regarding the Statute aforesaid (*such a Day in such a Year*) of the Lord *George* the Second, now King of *Great-Britain*, at *D.* in the said County of *S.* (of his Envy and Malice forethought) in the Presence and Hearing of many (divers) faithful Subjects of the said Lord the now King, with Intention to bring the said Earl of *B.* into Danger of the Loss of his Life, did of and concerning the said Earl of *B.* then and still one of the Peers and Lords of Parliament of this Kingdom, as aforesaid, speak, utter, and with an audible (loud) Voice, publish and declare divers false, feigned, malicious, and horrible Lyes and Tales in these *English* Words following, that is to say, The Duke of *O.* (\* meaning the said *James* Earl of *B.*) is a Papist, and in the *Irish* Plot (\* meaning a certain

\* *Note*, The Use of an *Innuendo* is to mark out a Thing or Person more certainly than it was before described; but it cannot make that certain which had no Certainty before; nor can it alter the Matter by enlarging or restraining the Sense of the Words. See 4 Co. 17. March. 138, &c.

certain wicked Plot and Conspiracy then carrying on in Ireland, against the now Lord the King) whereas in Truth the same Earl of *B.* is not, nor ever was, a Papist, nor guilty of any High-Treason or Conspiracy against the said Lord the now King; Whereby (by reason whereof) great Scandal and Discord within this Kingdom, did then, and there, and may hereafter (more and more) arise to the said Earl of *B.* in Contempt of the said Lord the now King, and against the Form of the Statute aforesaid, to the Damage of him the said *James* Earl of *B.* one thousand Pounds; and thereupon as well for the said Lord the now King as for himself, he brings his Suit. See the Plea hereto *post. Tit. Abutement.*

Scan. Page

*Another for Words spoken against a Duke  
(not reciting the Statute.)*

Middlesex to wit. **T**HE most noble *C.* Duke of *R.* one of the Peers and Lords of Parliament of this Kingdom of *Great-Britain*; who sues (prosecutes) *Sc.* (as before to) That whereas the same *C.* Duke of *R.* was (on such a Day and Year) and long before, and ever since, hitherto hath continued to be one of the Peers, and Great Lords of this Kingdom; and hath had, and yet hath, a Voice (Vote) and Seat in the Parliament of the said Lord, the now King of *Great-Britain*, as one of the Peers of this Realm (Kingdom) Yet he, the aforesaid *W. H.* contriving, and maliciously intending against the Form of the Statute, in such Case lately made and provided, to stir up great Scandal of the aforesaid

Scandal of a Duke. See Inst. Leg. 319, 320. Rast. Entr. 13. Lilly 123. 494.

## Declarations, &amp;c.

Scan. Dag.

Duke, whereby Discord and Strife may arise between the same Duke and other Peers and great Men of the said Lord the King of this Realm, on the aforesaid . . . . Day of . . . . in the Year of the Lord one thousand, &c. aforesaid, at B. in the County aforesaid; having Discourse with one F. G. of and concerning the said Duke, did then and there, in the Presence and Hearing of divers good and faithful Subjects of the said Lord the now King, falsely, maliciously and scandalously, speak, utter, publish and declare, these false, feign'd, scandalous, and opprobrious Words following, that is to say, *The Duke of R. is a base Man, and will not pay his Debts, &c.* By reason (pretext) of which speaking, uttering, publishing, and declaring of the said Words, he, the said Duke, sustained and suffered great Loss and Prejudice in his Honour, Fame, and Estimation, among the Peers and great Men aforesaid; and also the Displeasure of the said Lord the now King toward the said Duke; and likewise divers great Discords and Scandals have arisen, and are daily more and more like to arise within this Realm, between the said Duke and divers other Peers and great Men, and other good Subjects of the said Lord the King, to the great Disturbance of the (publick) Tranquillity of this Kingdom, in Contempt of the said Lord the now King; to the great Scandal and Defamation of the said Duke, and against the Form of the Statute aforesaid; to the Damage of the said Duke, who sues as well for the said Lord the now King, as for himself, 2000 l. And thereof the same Duke, as well for the said

said Lord the now King as for himself, brings Scan. Wag.  
his Suit.

*A Declaration for Writing and Publishing a  
Libel against a Peer.*

*Middlesex to wit.* **H.** Lord *E.* Baron of *F.* one of the Peers and great Men of this Kingdom of *Great-Britain*, who sues (prosecutes) *Sc.* as above, complains against *G. D.* in Custody of the Marshal, *Sc.* (reciting the Statute as above) yet he, the aforesaid *G. D.* not regarding the Statute aforesaid, did (such a Day and Year) at *Westminster* in the County of *Middlesex* aforesaid, by a previous Conspiracy, had the same Day and Year, with one *A. B.* did write and publish a certain false, feigned, and scandalous Writing, called, *A true History*, &c. (and so set forth the Libel) of and concerning the same *H. Lord E.* charging him (suggesting) the said *H. Lord E.* then and from thence, hitherto continuing to be one of the Peers and great Men of this Kingdom, and to have a Voice and Seat (Place) in the Parliament of this Kingdom of *Great-Britain*, to have perpetrated the Crime of Subordination of Perjury; which said Libel is written in the Words following, *A True History*, &c. (reciting the Libel.) By Pretence of which said Libel so written and published, divers false Rumours and Scandals did arise, and were had, and the same *H. Lord E.* fell under great Displeasure and Distrust of the said Lord the now King, and divers Peers and great Men of this Kingdom; so that the same *H. Lord E.* lost the Favour, Grace, and

*Libelling a  
Peer, See*

1 Sand. 120.

Br. Meth. 3.

2 Bro. 22.

Bro. Red. 72.

**Libels.** good Opinion, which the same Lord the King, and divers Peers and great Men of this Kingdom, had (formerly) before that time, had towards him the said *H. Lord E.* And the same *H. Lord E.* thereby also fell into great Danger of incurring the Pains and Penalties of the Laws of this Kingdom, made and provided against Suborners of Perjury. And great Scandal and Discord hath arisen, and more is likely, to arise in this Kingdom among divers of the Peers and great Men thereof, to the great Disturbance of the publick Tranquillity, &c. of the same (as above.)

See the 1<sup>st</sup>  
Precedent an-  
te in B. R.

*A Declaration by an Attorney against one  
for writing a Libel on him.*

Libelling an  
Attorney of  
B. R. See  
Inst. Leg. 350.

London to wit. **A.** *S.* Gentleman, an At-  
torney of the Court of  
the Lord the King (being) before the King  
himself (according to the Liberties and Pri-  
vileges for such Attorneys, and other Mini-  
sters of the same Court, therein used and ap-  
proved from Time beyond the Memory of  
Man) being present here in Court in his pro-  
per Person, complains, That whereas he the  
said *A. S.* is a good and faithful Subject of  
the Lord the now King, and from (the Time  
of) his Birth hitherto, hath carried and be-  
haved himself as a good and faithful Subject  
of the said Lord the King, and of his Proge-  
nitors, Kings and Queens of this Realm,  
and hath been (always) known, esteemed, and  
reputed amongst all the Lieges and faithful  
Subjects of the said Lord the King, to whom  
the said *A.* was known, to be of good Name,  
Fame

Fame and Esteem, without any Spot or Stain of the Crime of being a Corrupter or Seducer of false Witnesses. And also, *whereas* the same *H.* hath been for many Years now last past, and still (yet) is an Attorney of the said Court of the said Lord the King here, before the King himself, and hath also been employed in the Way (Business) of a Solicitor of Causes and Suits, as well in that as in other Courts of Justice within this Kingdom of *Great-Britain*, without any Guilt of embracing, seducing, or Maintenance of Witnesses to swear falsely, and hath always born and behaved himself well and honestly in his Business as an Attorney or Solicitor, whereby the same *H.* obtain'd a good Name, Fame, and Esteem among his Clients; and by reason thereof was accustomed to acquire great Gains and Profit for the Sustainance of himself and his Family. And also, *whereas* the said *M.* (the Defendant) and *E.* his Wife heretofore, to wit, in the Term of *St. Michael*, in such a Year of the now King, had exhibited into the Court of the said Lord the King, of his Chancery, then being at *Westminster* aforesaid, a certain Bill of Complaint against one *J. B.* and upon the same Bill it was so (far) proceeded in the same Court of Chancery, That divers Witnesses, to wit, *S. J.* and the aforesaid *A. S.* the now Plaintiff, with divers others, were produced and examined on the Behalf of the aforesaid *T.* yet he, the aforesaid *M.* not ignorant of the Premises, but contriving and intending to hurt and destroy the good Name and Fame of him *A.* and to deprive him of the Means of sustaining himself and Family, did *such* a Day,

*Recital of Proceedings in Chancery.*

*Subordination.*

## Declarations, &c.

**Perjury.**

Year, and Place, falsely and of his mere Malice, devise, compose and write, in a certain Paper of and concerning the aforesaid *H.* and the aforesaid *S.* and *J.* respectively, on occasion of their being produced and examined in the said Cause as aforesaid, these false and scandalous Words following (*recite the Words*) And afterwards, to wit, on the same Day, Year, and Place aforesaid, the said Paper so containing in itself the false, malicious, and scandalous Words aforesaid, he the said *M.* did publish and declare, by reason (Occasion or Pretext) of which said contriving, devising, composing, writing and publishing, of which said Paper, he the said *A.* lost his good Name, Fame, and Esteem among his Clients; and many of his said Clients deserted him, whereby he is deprived of the Means of sustaining (supporting) himself and Family, to his Damage of 1000 *l.* and thereof he brings his Suit.

*A Declaration for Words charging the Plaintiff with Perjury.*

*In C. B. for a  
Charge of Per-  
jury. Inst.  
Leg. 339.  
Clift. 104.*

**A.** *B.* was attached to answer to *C. D.* of a Plea of Trespass upon the Case; and whereof the same *C. D.* by *G. F.* his Attorney, complains, That whereas the same *C. D.* is a good and faithful Subject, &c. and free from the Crime of Perjury, &c. (as before to) And whereas the same *C. D.* was (such a Day and Year of the King) summoned to be before *R. S.* Knight, then Mayor of the Town of *L.* to testify and say the Truth of and concerning a certain Matter then and there depending,

pending before the said Mayor to be heard; and the aforesaid C. being then and there ready (prepared) to be sworn upon the Holy Gospels of God, to say the Truth therein before the said Mayor. Yet the aforesaid A. being not ignorant of the Premises, by his own mere Malice and wicked Design, contriving to scandalize and prejudice the said C's good Name, Fame, and Reputation; and also to bring the said C. into Trouble, Vexation, and Disgrace (Discredit) did at L. in the County aforesaid, in the Presence and Hearing of the said Mayor, and of divers (many) other good Subjects of the said Lord the now King, speak, utter, publish, and declare these *English* Words following, to wit (or that is to say) Sir (meaning the aforesaid R. S. then Mayor of the said Town of L.) *don't give him the Book, for he* (meaning him the said C. D.) *is a perjured Fellow, and that I will prove.* By Pretext (Reason or Means) of which said false, feigned, and scandalous Words, the said C. was not only grievously hurt (injured) in his said good Name, Fame, and Reputation; but is also very much prejudiced in divers of his honest and lawful Employments, to the Damage of him C. &c. See a Precedent for charging an Attorney with Perjury, &c. *Cliff's Entries* 104.

*A Declaration for Words charging one with Rape.*

In B. R. for Words of Rape.

See 2 Bro. 12.

2 Cro. 19.

Hans. 57.

1 Co. 101.

589, &c.

now Godb. 287.

*Spiddlesex* to wit. A. B. of &c. complains of J. S. in Custody (&c. ante) That whereas the aforesaid A. is

## Declarations, &amp;c.

Rape.

now, and from the Time of his Birth hitherto hath been a good, true, chaste and honest (liege) Subject of the Lord the (now) King, and his Progenitors Kings and Queens of *Great Britain*, and wholly uncorrupted, unspotted and unstained with any filthy, unchast or debauch'd Crime of Life, and hath been always of good Name, Fame and Reputation by Reason or Means whereof he deservedly acquired the good Opinion, Favour and Benevolence (Good-will) of divers eminent and worthy Persons, &c. yet the foresaid *J. S.* being not ignorant of the Premisses but greatly envying the Happiness and good Estate of him *A.* and contriving and maliciously intending not only totally to blacken and prejudice him *A.* in his good Name, Fame and Reputation, but also to bring him into Danger of the Loss of his Life, did such a Day and Year at *S.* in the County of *M.* aforesaid, in the Presence and Hearing of many good Subjects of the Lord the now King, openly and publickly speak, publish and declare these English Words following, to wit, *Thou* (meaning the now Plaintiff) *didst ravish M. W.* (meaning *M.* the Daughter of one *J. W.*) *against her Will* (meaning against the Will of the said *M. W.*) *and deserv'st to be hang'd for it.* By Pretext (Reason or Means) of the said speaking and publishing of which said false and scandalous Words he the same *A.* is not only greatly hurt in his good Name and Fame, but is very much prejudiced and hindered in transacting divers of his honest and lawful Employments, to the Damage of him *A.* 500 l. &c.

A De-

*A Declaration for Words charging a Par-  
son with Buggery, &c.*

**W**HEREAS the foresaid *A.* hath hitherto from the Time of his Birth behaved and govern'd himself as a good, true, chaste and faithful Subject of the Lord the now King, and his Progenitors, &c. and among (by) his Neighbours, and other faithful Subjects of the said Lord the King hath always been known, esteem'd and reputed to be of honest and chaste Behaviour, and of good Example of Life and Conversation; and altogether (wholly) free from, and unspotted with any kind of Incontinency, Sodomy or Buggery. By Reason, Means whereof the same *A.* not undeservedly acquired not only the Love, Esteem, and Favour of all his Neighbours, but also of all other faithful Subjects of the said Lord the King, to whom he was known, and by the space of four Years now last past, and more hath been a Clerk in Holy Orders, and beneficed with the Rectory of *F.* in the County aforesaid, yet the foresaid *C.* being not ignorant of the Premises, but from his own mere and mischievous preconceived Malice, contriving and maliciously intending the same *A.* wholly to blacken and defame, and to scandalize, hurt and injure him in his good Name, Fame and Reputation; and also to bring him into the Danger of the Loss and Forfeiture of his Life, and of all and singular his Goods, Chattels, Lands and Tenements, and of his Benefice aforesaid, such a Day and Year at *F.* aforesaid, did falsely  
and

*For Words of  
Sodomy and  
Buggery, and  
for indicting  
him thereof.  
See 12 Co. 37.  
2 Brow. 21.  
Lilly 62.*

**Buggery.**

and maliciously in the Presence and Hearing of many Subjects of the Lord the now King, wickedly impose on, object to, and charge the said *A.* with the Crime of Sodomy, and published and declared, That the said *A.* had committed and perpetrated that Crime with a certain Cow (Heifer) and further the foresaid *C.* intending wholly to defame, ruin, and destroy him the said *A.* did further, by his said wicked Malice at the General Sessions of the Peace held by Adjournment at *N.* in the County aforesaid, on *Wednesday* the Tenth Day of *May* (in *such* a Year of the King's Reign) before *L. M. Esq; N. O. Esq; P. N. Esq; &c.* Justices of the Lord the King; assigned to keep the Peace in the County aforesaid, and also to hear and determine divers Felonies, Trespases, and other ill acts (Misdeeds) perpetrated (committed) within the same County, falsely and maliciously cause a certain Bill of Indictment to be ingrossed in Parchment (setting forth) That he the same *A.* (*such* a Day and Year) not having the fear of God before his Eyes, but being seduced by the Instigation of the Devil, at *F.* in the County aforesaid, in a certain Place there called the Church-yard, made an Assault in and upon a certain Cow, (Heifer) of the said *A.* then and there being, and the same Cow, (Heifer) he the said *A.* did then and there with his Arms embrace, and with the foresaid Cow did then and there wickedly, feloniously, and against the (Course) Order of Nature, had venereal Congress, and in and with the same Beast did then and there wickedly, feloniously and devilishly commit and perpetrate that detestable, horrible and sodomitical

See Lilly 62.  
The Indictment  
recited.

tical Act (Crime) of Buggery, against the Peace of the Lord the now King, and against the Form of the Statute in such Case made and provided, which said Bill of Indictment so ingrossed as aforesaid, he the foresaid C. did falsely and maliciously exhibit at the foresaid General Sessions of the Peace at N. aforesaid, held before the Justices aforesaid, to a Great Inquest, then and there empannelled, charged and sworn. And altho' he the said C. well enough knew all and singular the Premisses contained in the said Bill of Indictment to be false, feigned and contrary to the Truth, yet he then and there did upon his Oath falsely, wickedly, maliciously and scandalously affirm and assert to the Jurors of the said Great Inquest, That the Matter so contained in the said Bill of Indictment as aforesaid was true; whereas in Truth the Matter so alleged against him the said A. in the said Bill of Indictment contained and above specified as aforesaid, was altogether (wholly) false and contrary to Truth, and falsely and maliciously devised by the foresaid C. with Intention to molest, trouble and defame the said A. and to take away and extinguish the Life of him A. under Colour of Justice, and to cause a Forfeiture of his the said A. Goods and Chattles, Lands and Tenements: And after that the foresaid C. had given his Evidence as aforesaid upon the said Bill of Indictment to the foresaid Jurors of the said Great Inquest: They the foresaid Jurors did then and there, to wit, at the said Sessions of the Peace at N. aforesaid to (before) the foresaid Justices give their answer in writing indorsed on the said Bill, That they the said

Jurors

## Declarations, &amp;c.

**Officers.** Jurors were altogether (wholly) ignorant of the Matter in the said Bill contained; by Pretext (Reason or Means) of which said scandalous Words and Indictment, he the same *A.* is not only grievously hurt in his good Name, Fame, Credit, Estate and Reputation, wherein he was formerly untouch'd, but also was forced and compelled to lay out, disburse, and expend divers Sums of Money in and about his Purgation in the Premisses, and has also been very much hindred, hurt and damnify'd in transacting his honest and lawful Affairs, to the Damage of him *A.* 1000 *l.* and thereof he brings his Suit.

*A Declaration for Slandering a Surveyor of the Navy.*

*In B. R. Slander of Office*  
*Surveyor of the Navy.*  
*See Lilly's Ent. 79. See also Inst. Leg. 342. 3.*

*Middlesex to wit.* **E. D.** Esq; complains of **E. J. F.** in custody, &c. for that to wit, *That whereas* the fore-said *E.* hath been and is a good, true, faithful and honest Subject of the Lord the now King, and the Lady *A.* late Queen of *Great Britain* deceased, and hath always been of good Name, &c. among his Neighbours and other faithful Subjects of the said now King and late Queen; and also whereas the fore-said Lady *A.* late Queen of *Great Britain*, did by her Letters Patent, under the Seal of *Great Britain*, bearing date at *Westminster*, such a Day and Year, constitute and appoint him Surveyor of all and every the Ship and Ships of the Navy of her the said *A.* late Queen of *Great Britain*, in the Place and Stead of *J. T.* Knt. then deceased, and thereby gave full

## For Slander.

15

Estates.

full Power and Authority to exercise the Office by himself or Deputy, with a Sallary of 500 l. per Ann. &c. (*i. e.* setting forth the Substance of the Grant) That the Defendant was employed in building a dry Dock for Ships, and maliciously designing the Ruin of the Plaintiff spoke the Words, &c. See Lilly's Entr. pa. 77, or rather 79.

### A Declaration for Slandering ones Title to an Estate.

**C.** D. to answer to *A. B.* That, whereas the same *A.* was lawfully and peaceable and quietly seised in his Demesne as of Fee-simple, &c. of and in the Manor of *M.* with its Rights, Members and Appurtenances; and being so seised, he the same *A.* afterwards, to wit, (such a Day and Year) had intended and proposed to Lease the said Manor and Premises to any Person or Persons that should be willing to take the same on a Lease for a certain Number of Years to be agreed on between them; yet the foresaid *C. D.* well knowing the Premises, but contriving and maliciously intending to draw the said *A.*'s Right and Title to the said Manor into Scandal and Infamy, and to hinder and obstruct the said *A.* from letting, leasing the said Manor and Premises to any Person, according as he the said *A.* had purposed and intended; and purposing to entitle the Lord the now King to the same Manor as a Manor concealed, and of Right belonging to the said Lord the now King in Right of his Crown of *Great Britain*, Did on (such a Day and Year) at *M.* in the Presence

*In C. B.*  
For saying the Plaintiff had no Right to a Manor, when about to let it, which occasion'd a Commission of Inquiry whether it was not concealed, &c.  
See Rast. 494, 594. Inst. Leg. 349.

*Estates.*

*Commission.*

and Hearing of one R. S. Gent. and of divers other Lieges of the Lord the King (who are unknown to the said *A.*) affirm and publish, That the aforesaid *A. B.* had no Right or Title to the Manor of *M.* aforesaid, whereby the aforesaid *R. S.* giving Credit to the aforesaid Assertion and Declaration of the said *C.* did afterwards (*such a Day, &c.*) prosecute out of the Court of Chancery of the said Lord the now King, certain Letters Patent, or a Commission under the Great Seal of the said Lord the now King, directed to one *T. W.* Knt. and certain others, to inquire by the *Oaths* of certain good and lawful Men of the said County of *S.* whether the *Right* or *Title* of the said Manor, was concealed from the said King or not. By Reason of which said Affirmation and Publication the aforesaid *A.* could not lett (Lease) the said Manor with the Appurtenances, to any Person or Persons (whatsoever) And also, he the said *A.* was forced to lay out and expend divers considerable Sums of Money, in and about the Defence of his Right and Title to the said Manor and Appurtenances: By Pretext (Means) whereof, he the same *A.* hath been very much vexed, disquieted, and (prejudiced) injured; from whence, he saith, he is the worse, and hath Damages to 150 *l.* and thereupon he brings his Suit. See *Co. Entr.* 29, 30, 34, 35. *Hern.* 111, 141. 1 *Brownl.* 70. *Rob. Entr.* 14. 2 *Mod. Intr.* 25. *Upper Bench Precedents*, 116, 235, &c.

For

For Slander of a Woman whereby she lost  
her Marriage, &c.

Warwick to wit.

**D.** B. Spinster, complains  
of W. W. Clerk, and  
C. his Wife in Custody, &c. for that to wit,  
That whereas the aforesaid D. is a good, true,  
pious, chaste and honest Liege and Subject of  
the Lord the now King; and as such a good,  
true, pious, chaste and honest Subject of the  
said Lord the now King, hath behaved, and car-  
ried herself, and continued from the Time of  
her Birth hitherto, and been accounted, known,  
and reputed to be of good Name, Fame, Con-  
dition, Conversation, Life and Behaviour a-  
mong her Kinsfolk, Friends and Neighbours,  
and other Subjects of the said Lord the now  
King; and thro' the whole Course of her Life  
past, hath been wholly free, innocent, and  
clear from any Whoredom, Adultery, For-  
nication, or Incontinence, and lived and con-  
tinued a Virgin (Life) State, always desiring,  
embracing, and exercising all Kind of Virtue,  
Modesty, Sincerity, Probity and Honesty.  
By Pretext (Means) whereof, she the said  
D. had not only deservedly acquired and ob-  
tained great Favour and Benevolence (good  
Will) among her Parents, Kinsfolks, Friends  
and Neighbours, and other faithful and cre-  
ditable Subjects of the said Lord the now  
King; but also divers Persons of honourable  
and great Estate and Reputation, did earnest-  
ly desire the (Friendship) Consortship and  
Society of the said D. by Reason of her pious,  
pure, immaculate, and uncorrupt Conversa-

In B. R.  
Slander, Loss  
of Marriage.  
See Lilly's  
Ent. 61, &c.  
An elegant  
Precedent.

Special Da-  
mage.

C

tion :

Incontinen-  
nency.

tion : And whereas *R. B.* Widow, the Mother of her the said *D.* by Reason of her the said *D.*'s pure and chaste and unspotted Life intended to give, and was then about to give freely of her own proper Moneys to the foresaid *D.* the Sum of 150*l.* for her the said *D.*'s Preferment. And whereas *J. B.* the Brother of the foresaid *D.* a Man of a great Estate, did by Reason of her the said *D.*'s pure, immaculate and uncorrupt Conversation, bear so great Favour, Love and Goodwill towards her the said *D.* that he the said *J.* did intend freely to give, and was at that Time about to give to the said *D.* the further Sum of 100*l.* of like lawful Money for the present Support, Preferment and Augmentation of the Portion of her the foresaid *D.* Yet the foresaid *C.* (*i. e.* the Wife) being not ignorant of the Premisses, but maliciously envying the happy State and Condition of her the said *D.* and contriving and intending not only to scandalize and defame the said *D.* in her good Name, Fame, Credit and Reputation, but also totally to hinder and obstruct the said good Intentions of the said *R.* her Mother and *J.* her Brother towards her, and to bring her the said *D.* into the utmost Discredit and Hatred of them the said *R.* and *J.* and of all others her Kinsfolks, Friends and Neighbours, and also intending to deprive and obstruct the said *D.* from all Preferment, and from all Gifts, Donations, Legacies and Bequests of her Parents, Kinsfolks and Friends, on the first Day of *June* (in such a Year of the King) at *C.* in the County aforesaid, did in the Presence and Hearing of divers faithful and creditable Subjects of the said Lord  
the

the now King, speak, utter, assert, and with a loud (audible) Voice pronounce and publish of, and concerning the same *D.* these false, feigned, scandalous and opprobrious English Words following, *to wit, Mistress. Bracebridge has had a Child by Master Sacheverel* (meaning *H. S. of D. &c.*) *and the Child is kept at* (meaning the Town of *Y.* in the County of *W.*) by Pretext (Reason or Means) of speaking and publishing, of which said false, feigned, scandalous *English Words*, the said *D.* not only fell into great Infamy and Scandal of the mischievous and wicked Crime of Whoredom, Fornication and Incontinency among many venerable and creditable Persons, by whom the same *D.* was before had in great Honour, Credit and Esteem, but also all other Persons who before the speaking of the said false, feigned, &c. Words, used greatly to desire the Consortship and Society of her the said *D.* did thereupon withdraw, and do since daily more and more withdraw themselves from the Consortship and Society of the said *D.* as from the Consortship of an unchaste and whorish Woman; and also by Reason of the speaking of the said false, feign'd, &c. Words aforesaid, the foresaid *R. B.* the Mother of the said *D.* and the foresaid *J. B.* the Brother of the said *D.* have respectively, wholly refused, and do still refuse to give to the said *D.* (either) the said 150 *l.* or the said 100 *l.* so intended to be given to her the said *D.* as aforesaid, and also by Reason of speaking the Words aforesaid, she the said *D.* hath wholly lost the Love, Esteem and Good-will both of the said *R.* her Mother, and of the said *J.* her Brother, and of all her other Friends and

Bankrupt  
cy.

Acquaintance, and also her Preferment aforesaid; whereof the same D. saith, That she is the worse, and hath Damage to, &c.

*For saying to a Tradesman, you are a broken Fellow.*

In C. B. calling a Tradesman Bankrupt.  
Declaration in C B See Parlt. 12. Lilly's Entr. 73, &c.

Surrey to wit. **T**HO. Pilkington late of Southwark in the County of S. Knight, was attached to answer to E. Bolfworth of a Plea of Trespass on the Case, whereof the same E. by T. R. his Attorney complains. That, whereas the same E. is a good, true and faithful Subject of the Lord the now King, and now Exercises, and for divers Years last past hath exercised the Trade, Art or Mystery of a Perfumer, and hath always behav'd himself as a faithful Buyer and Seller, in buying and selling in the same Trade; and from the Time of his Birth hath hitherto behav'd himself as a good, true and faithful Subject of the said Lord the King; and during the whole Time aforesaid hath (always) been held and reputed of good Name, Fame and Estimation by many Lieges (good Subjects) of the said Lord the King, and for many Years now last past hath lawfully used and exercised, and doth still use and exercise the said Trade, Art or Mystery of a Perfumer by Way of Merchandizing in buying and selling, and lawfully bargaining (trading) with many Subjects of the said Lord the King, and during that whole Time hath well and faithfully kept, perform'd and fulfilled his Faith, Contracts and Promises in Things and Transactions (Occurrences) touching

ing his Art, Trade or Myſtery aforeſaid, and alſo in the true and faithful (honeſt) Payment of his Debts at all Times, without any Spot, (Act or Appearance) of Breaking, and by Reaſon thereof had obtained and enjoy'd the Credit and good Opinion of divers good Subjects of the ſaid Lord the now King, whereby he the ſame *E.* did daily and honeſtly gain and acquire great Gain and Profit for maintaining of himſelf and Family, and other lawful Purpoſes. Yet the foreſaid *Thomas* being not ignorant of the Premiſſes, but of his own meer and wicked Malice contriving and endeavouring to blacken and prejudice (injure) the good Name, Fame, State and Opinion (Eſtimation) of him the ſaid *E.* and to draw and bring him the ſame *E.* into a Diſcredit with the Lieges of the ſaid Lord the now King, and to bring him into Scandal, Diſgrace and Infamy, ſo that the ſame Subjects of the ſaid Lord the King, ſhould not Trade or Deal, or have any Thing to do with the ſaid *E.* and alſo, That they ſhould think (eſteem) the ſaid *E.* to be a Bankrupt, did (ſuch a Day in ſuch a Year of the King at ſuch a Place) of, to and concerning the ſaid *E.* in the Preſence and Hearing of divers faithful Subjects of the ſaid Lord the now King, falſly and maliciously ſpeak, utter, &c. ante. *You* (meaning the aforeſaid *E.*) *are a pitiful broken Fellow, and are not able to pay your Debts* (meaning the Debts of the ſaid *E.*) and alſo whereas the ſame *T.* afterwards, to wit, the Day and Year and Place aforeſaid, did of his further Malice and Envy againſt him *E.* before then had and conceived, did alſo of, to and concerning the ſaid *E.* falſly

Bankrupt-  
cy.

Note; the  
Words are laid  
3 Ways in Or-  
der to make  
them agree  
with the Evi-  
dence to be  
given at the  
Tryal.

## Declarations, &amp;c.

Bankrupt.

and maliciously speak, utter, &c. these other false, feigned, scandalous and opprobrious *English Words* following. *You* (meaning the foresaid *E.*) *are a pitiful broken Fellow, go home and pay your Debts* (meaning the Debts of the said *E.*) and also whereas the same *T. P.* afterwards, &c. (as before, laying a third set of Words thus) *you are a pitiful broken Fellow, and cannot pay your Debts*, by Pretext, (Reason) of speaking and publishing, which said false, feigned and scandalous Words he the said *E.* is not only very much worsted (prejudiced) and damnified in his Credit, Opinion, Esteem and good Opinion, but is also greatly damaged and injured in transacting his Affairs, and in his Trading and Credit with divers honest and worthy Persons with whom he formerly used to Trade in buying and selling his Goods, Wares and Merchandizes; and for that Cause many Subjects of the Lord the now King, have wholly refused, and do refuse to have any Dealings or Commerce with him the said *E.* from whence (whereof) he saith, That he is the worse, and hath Damage to 1000 *l.* and thereupon he brings his Suit.

Note; *On the Issue, Not guilty, to this Declaration, the Plaintiff* (tho' a mean Person) *recover'd a Verdict and Judgment for 8000 *l.* Damages; upon which a Writ of Error was brought in Parliament, and the Judgment there affirmed. Whereupon Sir Tho. Pilkington the Defendant paid the Damages, &c.* But the Case seems to smell of those Times, *i. e.* 34 and 35 *Car. 2.* When the Rage ran high betwixt Whigg and Tory.

And with this I shall conclude *Declarations* on the Case for *Words*, and proceed to such as concern *Facts*, viz.

**D**eclarations on the Case concerning Acts of Non-feasance and Male-feasance or Mis-feasance. And first, of Non-feasances, i. e. the not doing what one has promised or undertaken (on a good Consideration) to do: And this Respects most of those Actions that usually fall under the Denominations of *Assumpsits*, *Indebitatus Assumpsits*, *Quantum Valebats*, *Quantum Meruists*, *Quantum erogassets*, *Mutuata's*, and the like, which, as they concern Trade in General, and are consequently of much more frequent Use than any other Action in the Law; so I shall herein be more particular and distinct than on any other Head that falls within this Collection.

*Of Non-feasances in Assumpsits or Promises expressed or implied.*

Declarations upon *Assumpsits* or Promises, are either upon Promises expressed, or Promises imply'd. Express Promises are either in Writing, or by Parol, or Words spoken. In writing, are either on Promissory Notes, Bills of Exchange, or written Contracts, or Articles sign'd, of which some Precedents here follow.

*A Declaration in Assumpsit against two Partners in Trade, on a Note given by one of them on Behalf of himself and the other.*

London to wit. **T**. B. late of London, Merchant, and R. S. late of London, Merchant, were attached to answer to S. W. of a Plea of Trespass on the Case; and whereof the same S. by A. B. his Attor-

In C. B. Assumpsit against two Partners on a Note by one, &c. See Lilly's Entr. 48.

## Declarations, &amp;c.

By Notes.

1 Count.

Attorney, complains, That whereas on the ninth Day of *January*, in the Year of the Lord 1717; and before and after they the said *T.* and *R.* were Partners in the Way of Trading (Merchandizing) using and exercising their Trade and Commerce jointly and in Partnership together, to wit, at *London*, in the Parish of the blessed *Mary of the Arches* (the *Bows*) in the Ward of *Cheap*: And they being so Partners and Associates thereof (therein) as aforesaid, he the aforesaid *T.* after the first Day of *May*, in the Year of the Lord 1700, to wit, on the ninth Day of *January*, in the Year of the Lord 1717, at *London* aforesaid, in the Parish and Ward aforesaid, did make a Note in Writing dated the same Day and Year, and subscribed with his own proper Hand, and therein (thereby) promised to pay to the aforesaid *S. W.* 200 *l.* in one Month after the Date of the same Note, for Value received (of Mr. *David White*) by reason whereof, and by Force of the Statute in such Case made and provided, they, the aforesaid *T.* and *R.* became bound (chargeable) to pay to the aforesaid *S. W.* the aforesaid 200 *l.* And being so chargeable, they, the aforesaid *T. R.* on the aforesaid ninth Day of *January*, in the Year abovesaid, at *London* aforesaid, in the Parish and Ward aforesaid, did in Consideration thereof take upon themselves, and to the said *S. W.* did then and there faithfully promise, That they the aforesaid *T.* and *R.* would well and faithfully pay and satisfy the said 200 *l.* to the aforesaid *S. W.* according to the Tenor of the aforesaid Note. And also, whereas the aforesaid *T.* and *R.* being so (Companions) Associates and Partners as aforesaid

2 Count.

said, after the aforesaid first Day of *May*, in *By Notes.*  
the Year of the Lord 1705, abovesaid, to  
wit, on the aforesaid ninth Day of *January*,  
in the Year of the Lord 1717, at *London*  
aforesaid, in the Parish and Ward aforesaid,  
did according to the Custom (Usage) of Mer-  
chants, make their certain Note in Writing,  
bearing Date the same Day and Year; and  
thereby promised to pay to the aforesaid *S.*  
*W.* other 200 *l.* within one Month after the  
Date of the same Note, for Value received,  
of Mr. *David White*: By Reason whereof,  
and by Force of the Statute in such Case made  
and provided, they, the aforesaid *T.* and *R.*  
became chargeable to pay to the aforesaid *S.*  
*W.* the aforesaid 200 *l.* last mentioned. And  
being so chargeable, they, the aforesaid *T.*  
and *R.* on the aforesaid ninth Day of *Janu-*  
*ary*, in the Year of the Lord 1717, above-  
said, at *London* aforesaid, in the Parish and  
Ward, aforesaid in Consideration thereof did  
take upon themselves, and to the same *S.*  
did then and there faithfully promise, That  
they, the aforesaid *T.* and *R.* would well and  
faithfully pay and content the same 200 *l.*  
to the aforesaid *S.* according to the Tenor of  
the same. Yet they, the aforesaid *T.* and *R.*  
not regarding their said several Promises so  
made to the said *S.* as aforesaid; but contri-  
ving and intending to deceive and defraud the  
said *S.* of the said several Sums of 200 *l.* and  
200 *l.* tho' they have been often requested  
thereunto, have not paid the same, nor any  
Penny thereof, &c. *Vide infra.*

Decla-

By Notes.

*Declaration on an indorsable Promissary Note,  
by the Indorsee against the Indorser.*

In C. B. by  
an Indorsee  
against the In-  
dorsor. Vid.  
Lib. Judic.

1st Count.

2d Count.

London to wit. **J. G.** late of *London*, Mer-  
chant, was attached to an-  
swer to **L. K.** of a Plea of Trespass on the  
Case; and whereof the same **L.** by **R. H.** his  
Attorney, complains, Why, whereas the a-  
foresaid **J.** after the first Day of *May*, in the  
Year of the Lord 1705, to wit, the 26th Day  
of *January* 1714, at *London* aforesaid, to wit,  
in the Parish of the *B. M. of the Arches*  
(*Bows*) in the Ward of *Cheap*, did make his  
certain Note in Writing, commonly call'd a  
Promissary Note, with the proper Hand of  
the said **J.** thereto subscribed (under-written)  
bearing Date the Day and Year last above-  
said, and did then and there deliver the said  
Note to one **T. L.** by which said Note he the  
aforesaid **J. G.** promised to pay to the said **F. L.**  
(by the Name of **F. L.**) or to his Order,  
four Months after Date of the same Note, for  
Value received, by the aforesaid **J. G.** And  
also whereas the aforesaid **F. L.** afterwards  
and before the Time of the Payment of the  
aforesaid Sum of Money, to wit, on the  
1st Day of *March*, in the Year last above-  
said, at *London* aforesaid, in the Parish and  
Ward aforesaid, by an Indorsement in and  
upon the same Note, under-written with the  
proper Hand of him **F.** he the said **F.** order'd  
the same Sum of Money to be paid to the  
aforesaid **L. K.** or to his Order, for Value re-  
ceived. And afterwards, to wit, on the 10th  
of Day of *March*, in the Year last aforesaid,  
at

## On Promises.

27

By Notes.

at *London* aforesaid, in the Parish and Ward aforesaid, the same *J.* had Notice of the Indorsement aforesaid. And by Reason thereof, and also by Force of the Statute in such Case lately made and provided, the same *J.* became chargeable to pay to the said *L.* the Sum of Money aforesaid, according to the Tenor of the Note aforesaid. And in Consideration thereof the same *J.* afterwards, *to wit*, the Day and Year last aforesaid, at *London* aforesaid, in the Parish and Ward aforesaid, did take upon himself, and to the same *L.* did then and there faithfully promise to pay to the aforesaid *L.* the aforesaid 96 *l.* according to the Tenor of the Note aforesaid. And also, whereas the aforesaid *J.* afterwards, *to wit*, the 1st Day of *June*, in the Year of the Lord 1715, at *London* aforesaid, in the Parish and Ward aforesaid, was indebted to the said *L.* in other 96 *l.* of lawful Money of *Great-Britain*, for the like (same) Sum of Money, by the same *L.* to the said *J.* before that Time lent and accommodated (advanced) and being so thereof indebted, he the aforesaid *J.* in Consideration thereof, afterwards, *to wit*, the Day and Year last aforesaid, at *London* aforesaid, in the Parish and Ward aforesaid, did take upon himself, and unto the same *L.* did then and there faithfully promise, That he the aforesaid *J.* would well and faithfully pay and content unto the same *L.* the aforesaid 96 *l.* when he should be afterwards thereunto required. Yet the aforesaid *J.* in no wise regarding his several Promises and Assumption aforesaid, so made to the said *L.* in in Form as aforesaid. But contriving, and fraudulently intending him the same *L.* in  
this

3d Count.

By Notes.

*Declaration on an indorsable Promissary Note,  
by the Indorsee against the Indorser.*

In C. B. by  
an Indorsee  
against the In-  
dorser. Vid.  
Lib. Judic.

1st Count.

2d Count.

London to wit. **J. G.** late of *London*, Mer-  
chant, was attached to an-  
swer to **L. K.** of a Plea of Trespass on the  
Case; and whereof the same **L.** by **R. H.** his  
Attorney, complains, Why, whereas the a-  
foresaid **J.** after the first Day of *May*, in the  
Year of the Lord 1705, to wit, the 26th Day  
of *January* 1714, at *London* aforesaid, to wit,  
in the Parish of the *B. M. of the Arches*  
(*Bows*) in the Ward of *Cheap*, did make his  
certain Note in Writing, commonly call'd a  
Promissary Note, with the proper Hand of  
the said **J.** thereto subscribed (under-written)  
bearing Date the Day and Year last above-  
said, and did then and there deliver the said  
Note to one **T. L.** by which said Note he the  
aforesaid **J. G.** promised to pay to the said **F. L.**  
(by the Name of **P. L.**) or to his Order,  
four Months after Date of the same Note, for  
Value received, by the aforesaid **J. G.** And  
also whereas the aforesaid **F. L.** afterwards  
and before the Time of the Payment of the  
aforesaid Sum of Money, to wit, on the  
1st Day of *March*, in the Year last above-  
said, at *London* aforesaid, in the Parish and  
Ward aforesaid, by an Indorsement in and  
upon the same Note, under-written with the  
proper Hand of him **F.** he the said **F.** order'd  
the same Sum of Money to be paid to the  
aforesaid **L. K.** or to his Order, for Value re-  
ceived. And afterwards, to wit, on the 10th  
of Day of *March*, in the Year last aforesaid,  
at

## On Promises.

27

By Notes.

at *London* aforesaid, in the Parish and Ward aforesaid, the same *J.* had Notice of the Indorsement aforesaid. And by Reason thereof, and also by Force of the Statute in such Case lately made and provided, the same *J.* became chargeable to pay to the said *L.* the Sum of Money aforesaid, according to the Tenor of the Note aforesaid. And in Consideration thereof the same *J.* afterwards, *to wit*, the Day and Year last aforesaid, at *London* aforesaid, in the Parish and Ward aforesaid, did take upon himself, and to the same *L.* did then and there faithfully promise to pay to the aforesaid *L.* the aforesaid 96 *l.* according to the Tenor of the Note aforesaid. And also, whereas the aforesaid *J.* afterwards, *to wit*, the 1st Day of *June*, in the Year of the Lord 1715, at *London* aforesaid, in the Parish and Ward aforesaid, was indebted to the said *L.* in other 96 *l.* of lawful Money of *Great-Britain*, for the like (same) Sum of Money, by the same *L.* to the said *J.* before that Time lent and accommodated (advanced) and being so thereof indebted, he the aforesaid *J.* in Consideration thereof, afterwards, *to wit*, the Day and Year last aforesaid, at *London* aforesaid, in the Parish and Ward aforesaid, did take upon himself, and unto the same *L.* did then and there faithfully promise, That he the aforesaid *J.* would well and faithfully pay and content unto the same *L.* the aforesaid 96 *l.* when he should be afterwards thereunto required. Yet the aforesaid *J.* in no wise regarding his several Promises and Assumption aforesaid, so made to the said *L.* in in Form as aforesaid. But contriving, and fraudulently intending him the same *L.* in  
this

3d Count.

## Declarations, &amp;c.

*By Notes.* this Particular, craftily and subtilly to deceive and defraud, hath not paid the said several Sums, or any Penny thereof to the same L. nor hath in any Manner contented him for the same (altho' to do this the aforesaid J. was afterwards, to wit, the Day and Year last abovesaid, at London aforesaid, in the Parish and Ward aforesaid, and often afterwards required by the said L.) but he hath altogether (wholly) refused, and still doth refuse, to pay that to him, to the Damage of him L. 100 l. and, &c.

Note, On a Demurrer to this Declaration Judgment was for the Plaintiff.

*A Declaration in Assumpsit by the Assignees of a Promissary Note, indorsed against the Executors of the Indorser.*

In B. R. on a Promissary Note, indorsed against the Executors of the Indorser concisely drawn. See Lilly 45.

Middlesex to wit. **G.** W. and G. C. complain of Rachel Lord, the Widow and Executrix of T. L. Gent. J. L. and M. T. Widow, Executors of the Testament and Last Will of R. L. deceased, in Custody of the Marshal of the Marshalsea of the Court of the Lord the King, being before the King himself; for that to wit, That whereas the aforesaid R. L. deceased, did in his Life-time after the first Day of May 1705, to wit, the 18th Day of May 1718, at Westminster in the said County of Middlesex, make his certain Note in Writing call'd a Promissary Note, subscribed with his proper Hand, bearing Date the same Day and Year. And by the same Note promised to pay to one E. M. or Order, 500 l. in six Months after

ter the Date of the same Note, for Value received. And that Sum of Money being unpaid to the said *E. M.* the same *E.* afterwards, to wit, the 30th Day of *April*, in the Year 1718, abovesaid, at *Westminster* abovesaid, indorsed that Note with his proper Hand thereto subscribed. And by that Indorsement he the said *E.* appointed the same Sum of Money to be paid to the said *G. W.* and *G. C.* whereof the abovesaid *R.* had Knowledge in his Life-time. And by Reason thereof, and also by Force of the Statute in such Case made and provided, the same *R.* in his Life-time became liable to pay to the same *G. W.* and *G. C.* the same Sum to the said *G. W.* and *G. C.* according to the Tenor of the same Note. And in Consideration of the Premises the same *R.* in his Life-time did assume upon himself (*i. e.* undertake) and to the said *G. W.* and *G. C.* then and there faithfully promised to pay to them that Sum of Money. Yet the abovesaid *R.* in his Life-time, nor the said *Rachel Lord*, *T. L.* *J. L.* and *M. T.* or any of them since his Death, have or hath not paid the same, tho' oftentimes thereunto requested by the said *G. W.* and *G. C.* but that to pay have hitherto refused, and every of them the said *R. L.* *T. L.* *J. L.* and *M. T.* do and doth still refuse, to the Damage of them the said *G. W.* and *G. C.* &c.

By Notes.

Indorsement.

A De-

By Notes.

*A Declaration by the Indorsee of an Indorsee of a Promissory Note against the Drawer.*

In C. B. by  
Indorsee of  
an Indorsee,  
&c. against  
the Drawer.  
See Lilly  
73.

1<sup>st</sup> Indorse-  
ment.

2<sup>d</sup> Indorse-  
ment.

London to wit. **J.** O. late of London, Scrive-  
ner, was attached to an-  
swer to *R. M.* and *W. D.* of a Plea of Tres-  
pass on the Case: And whereof they the said  
*R. M.* and *W. D.* by *G. R.* their Attorney,  
complain, Why whereas the aforesaid **J.** after  
the 1<sup>st</sup> Day of May, and before, &c. (see  
above) made a certain Note in Writing with  
his own proper Hand, thereto subscribed,  
call'd a Promissory Note, bearing Date the  
same Day and Year last above specified; and  
thêreby promised to pay to one Master *R. F.*  
or Order, 100 *l.* upon the 1<sup>st</sup> Day of *October*  
then next following, for the like Value re-  
ceived; and the aforesaid 100 *l.* being unpaid,  
he the aforesaid *R.* afterwards, to wit, the  
same Day and Year last aforesaid, at *London*  
aforesaid, in the Parish and Ward aforesaid  
(also) indorsed that Note with his proper  
Hand (also) thereto subscribed. And there-  
by appointed the Contents of the said Note  
to be paid to one *W. B.* or his Order, Value  
received. And the said 100 *l.* being still un-  
paid, he the said *W. B.* afterwards, to wit,  
the same Day and Year last aforesaid at *L.*  
aforesaid, in the Parish and Ward aforesaid,  
indorsed that Note with his proper Hand  
thereto subscribed; and thereby appointed  
the Contents of the said Note to be paid to  
*Robert Man* and *W. Day*, or their Order, for  
Value receiv'd. Whereof the said **J. Oades**  
after

afterwards, to wit, the same Day and Year, *By Notes.*  
 at *London* aforesaid, in the Parish and Ward  
 aforesaid, had Notice. By Reason of which  
 said Premises, and also by Force of the Sta-  
 tute in such Case lately made and provided,  
 he the said *J. O.* was and became liable to  
 pay to the said *R. M.* and *W. D.* the same  
 Sum of Money, according to the Tenor of  
 the Note aforesaid. And being so thereof  
 (therefore) liable, he the same *J.* afterwards,  
*to wit*, on the same Day and Year aforesaid,  
 in Consideration thereof did take upon him-  
 self, and to the said *R. M.* and *W. D.* then  
 and there faithfully promised to pay to them  
 the same Sum of Money, according to the Te-  
 nor of the Note aforesaid. Yet the same *J.* not  
 regarding his Promise and Undertaking (As-  
 sumption) aforesaid; but contriving and frau-  
 dulently intending to deceive and defraud  
 them the said *R. M.* and *W. D.* craftily  
 and subtilly in this Particular, hath not paid  
 the aforesaid 100 *l.* nor any Penny thereof,  
 to the said *R. M.* and *W. D.* or either of them  
 (altho' to do this (thereto) he was, on the 1st  
 Day of *October*, in such a Year, at *London*  
 aforesaid, in the Parish and Ward aforesaid,  
 requested by them) the said *R. M.*  
 and *W. D.*) but hath hitherto denied, and  
 still doth deny to pay it to them, to the  
 Damage of them the said *R. M.* and *W. D.*  
 130 *l.* &c.

*Note*, The Note in this Declaration was  
 thus; *I promise to pay to Mr. Richard Fowke,*  
*or Order, 100 l. upon the 1st Day of October*  
*1718. Witness my Hand, James Oades; and*  
*indorsed thus, R. Fowke, and indorsed again,*  
*W. Bowcock.*

*A De-*

By Notes.

*A Declaration by the Indorsee against the Indorser of such Promissary Note.*

In C. B. by  
an Indorsee a-  
gainst the In-  
dorser.  
Lilly 54.

Assignment of  
the Note.

Averment of  
Notice to the  
Drawer.

London to wit. **W**. W. late of London, Farrier, was attached to answer to T. S. of a Plea of Trespass on the Case. And whereof the same T. by N. B. his Attorney, complains, That whereas after the first Day of May in the Year of the Lord 1705, to wit, the 25th of May 1715, at London aforesaid, &c. (see before) one E. S. made his certain Note in Writing called a Promissary Note, subscribed with the proper Hand of him E. S. dated the same Day and Year last aforesaid; and the same Note to the aforesaid W. W. then and there delivered; by which said Note the aforesaid E. S. promised to pay to the aforesaid W. W. or his Order, the Sum of 20 l. in three Months after Date of the same Note, for Value receiv'd: And afterwards, and within the said three Months, to wit, the 23d Day of July, in the Year aforesaid, at London aforesaid, in the Parish and Ward aforesaid, he the aforesaid W. W. by his certain Indorsement subscribed with his proper Hand, and made upon the said Note, assigned that Note to the aforesaid T. S. and by the same Indorsement ordered the aforesaid E. S. to pay the Contents of the same Note to the said T. S. according to the Tenor of the same Note. And the said T. in Fact saith, That after the Assignment and Appointment of the same Note so made as aforesaid, and after the Expiration of the three Months mentioned in the same Note, to wit,

on the 23d Day of *August*, in the Year last *By Notes.*  
 abovesaid, at *London* abovesaid, in the Parish  
 and Ward abovesaid, he the said *T.* did shew  
 the said Bill, and the Indorsement made  
 thereupon as abovesaid, unto the abovesaid *E.*  
*S.* and then and there required the same *E.*  
 to pay the Contents of the same Bill, to wit,  
 the said Sum of 20 *l.* therein specified, unto  
 him the abovesaid *T.* according to the Tenor  
 of the said Bill, and the Indorsement afore-  
 said. But the same *E. S.* hath not paid the said *And Refusal*  
 Sum of Money to the said *T.* but the afore- *of Payment.*  
 said *E.* did then and there, *to wit*, the same  
 Day and Year and Place last abovesaid, refuse  
 and hath ever since hitherto refused to pay  
 the same Sum of Money. Whereof the same  
*T.* did afterwards, *to wit*, on the 24th Day of  
*August*, in the Year last abovesaid, at *London*  
 abovesaid, in the Parish and Ward abovesaid,  
 give Notice to the abovesaid *W. W.* And by *The Defen-*  
 Reason of the Premisses, and by Force of the *dant liable.*  
 Statute in such Case lately made and provi-  
 ded, he the abovesaid *W. W.* became, and  
 was, and is liable to pay to the same *T.* the  
 abovesaid Sum of 20 *l.* in the same Note men-  
 tion'd: And the same *W.* being so liable, did,  
 in Consideration thereof, afterwards, *to wit*,  
 on the same 24th Day of *August*, in the Year  
 last abovesaid, at *London* abovesaid, in the Pa-  
 rish and Ward abovesaid, take (assume) upon  
 himself, and to the said *T.* then and there  
 faithfully promised, That he the said *W.*  
 would well and faithfully pay and content the  
 said Sum of 20 *l.* to the said *T.* when he  
 should be thereunto afterwards required.  
 And also, whereas the abovesaid *W. W.* after- *2d Count for*  
 wards, *to wit*, on the same 24th Day of *Aug-* *20 l. received*  
*ust*, *tiff's Use.*

## Declarations, &amp;c.

*By Notes.* *gust*, in the Year last aforesaid, was indebted to the aforesaid *T.* in other 20*l.* of lawful Money of *Great-Britain*, for so much Money before that Time, had and received by him the said *W. W.* to the Use of the said *T. S.* And being so thereof indebted, he the same *W.* in Consideration thereof, did afterwards the same Day and Year last aforesaid, at *London* aforesaid, in the Parish and Ward aforesaid, take (assume) upon himself, and to the aforesaid *T.* then and there faithfully promised, that he the same *W. W.* would well and faithfully pay and content (satisfy) the same last mentioned 20*l.* unto the aforesaid *T.* when he should be thereunto afterwards required; yet he the aforesaid *W.* not regarding his Promises and Undertakings aforesaid, &c. (as before.)

*A Declaration on a Promissory Note made to the Plaintiff's Wife, and also on an Infimul Computasset with himself.*

*In C. B. on a Note to the Plaintiff's Wife, and infimul comp. with himself.* *See Mich. 4to Geo. 1. Rot. 364.* *London to wit.* **D.** *W.* late of *London*, Merchant, was attached to answer to *W. M.* of a Plea of Trespass on the Case; and whereof the same *W. M.* by *T. A.* his Attorney, complains, That whereas the aforesaid *D. W.* after the 1st Day of *May*, in the Year of the Lord 1705, to wit, the 13th Day of *August*, in the Year of the Lord 1716, at *London* aforesaid, in the Parish of the blessed *Mary of the Arches*, in the Ward of *Cheap*, made a certain Bill or Note in Writing, call'd a Promissary Note, sign'd and subscribed with the proper Hand of him *D.* bearing Date the same

same Day and Year last abovesaid, and then *By Notes.*  
 and there deliver'd the same Note to *Jane*, then  
 and as yet the Wife of him the said *W. M.*  
 by which said Note he the said *D. W.* promi-  
 sed to pay to the said *Jane*, by the Name of  
*Mrs. Jane Mac Henry*, in four Months after  
 the Date of the said Note, the Sum of 500 *l.*  
 for Value receiv'd, as by the said Note it ma-  
 nifestly appears, which said Note he the said  
*W. M.* afterwards, *to wit*, the same Day and  
 Year last abovesaid, at *London* abovesaid, in  
 the Parish and Ward abovesaid, accepted, and  
 to that Note then and there agreed. By Rea-  
 son of which said Premisses, and also by  
 Force of the Statute in such Case lately made  
 and provided, he the same *D.* became, and  
 was, and is liable to pay the abovesaid *Wil-*  
*liam Mac Henry*, the abovesaid Sum of 500 *l.*  
 according to the Tenor of that Note. And  
 the said *D.* being so liable, and in Consid-  
 eration thereof, afterwards, *to wit*, the Day and  
 Year last abovesaid, at *London* abovesaid, in the  
 Parish and Ward abovesaid, did take (assume)  
 upon himself, and to the same *W.* then and  
 there faithfully promised, That he the same *D.*  
 would well and faithfully pay and content unto  
 the abovesaid *W. M.* the abovesaid Sum of Mo-  
 ney, specified in the abovesaid Note, according  
 to the Tenor of the said Note. And also, where-  
 as on the abovesaid 13th Day of *August*, in the  
 Year of our Lord 1716 abovesaid, at *London*  
 abovesaid, in the Parish and Ward abovesaid,  
 they the abovesaid *W. M.* and *W. D.* accounted  
 together of (for) divers other Sums of Money  
 by the said *D.* unto the said *W.* before that  
 Time in arrear, and at that Time due and un-  
 paid. And upon that Account he the said *D.* was

*In simul com-  
 putaverunt.*

*By Notes.* then and there found in Arrearage towards the said *W. M.* in another Sum of 500 *l.* of like law-ful Money. And the same *D.* being so found in Arrearage towards the said *W.* as aforesaid, did in Consideration thereof, on the same Day and Year, at *London* aforesaid, in the Parish and Ward aforesaid, take (assume) upon him- self and to the aforesaid *W. M.* then and there faithfully promised to pay to the said *W. M.* the same Sum of Money last men- tioned, within four Months from thence next following; yet he the aforesaid *D. W.* not regarding his several Promises and Assump- tions aforesaid, but contriving and fraudulent- ly intending, craftily and subtilly to deceive and defraud the same *W.* in this Particular, hath not paid the said several Sums of Mo- ney, nor any Parcel thereof, within four Months after those Promises and Assumptions; nor hath he at any Time hitherto paid to the said *W.* the said Sum, or any Penny thereof, or any Way satisfied him the said *W.* for the same, altho' he the said *D.* hath often- times, *to wit*, on the 8th Day of *February*, and at divers other Times both before and since, been requested to do it by the said *W. M.* *to wit*, at *London* aforesaid, in the Parish and Ward aforesaid. But he the said *D.* hath hitherto altogether (wholly) refused, and still doth refuse to pay the same Sums of Mo- ney to the said *W. M.* to the Damage of him *W. M.* 600 *l.* and thereof he brings his Suit.

*To this Declaration the Defendant pleaded as followeth.*

*Plea.*

And the aforesaid *D.* by *F. B.* his Attor- ney, comes and defends the Force and Inju- ry,

ry, when, where, and how this Court shall *By Notes.*  
 think fit. And as to all the Sums of Money  
 in the aforesaid first Assumption (Promise)  
 above mentioned, the aforesaid *D.* saith, that  
 the aforesaid *W.* ought not to have his Action  
 thereof against him, because he saith, that  
 after the making of the Note mentioned in  
 the same, and before the Day of suing out  
 the original Writ of the said *W. to wit*, on the  
 13th Day of *August*, in the Year of the Lord  
 1716, he the said *W.* at *London* aforesaid, *to*  
*wit*, in the Parish of the *B. M. of the Arches*,  
 in the Ward of *Cheap*, by an Indorsement  
 upon that Bill, subscribed with his proper  
 Hand, ordered the Contents of the same  
 Bill to be paid to one *Timothy Johnson*; and  
 this he is ready to aver; whereof he prays  
 Judgment, if the said *W.* ought to have his  
 Action thereof against him. And as to all  
 the Sums of Money mentioned in the second  
 Promise in the aforesaid Declaration, he also  
 saith, That the aforesaid *W.* ought not to have  
 his Action thereof against him, because he  
 saith, That the aforesaid *D.* on the 10th Day  
 of *August*, in the Year of the Lord 1716, at  
*London* aforesaid, in the Parish and Ward  
 aforesaid, became bound to the aforesaid *W.*  
 in 1000 *l.* by his Writing Obligatory, sealed  
 with his Seal, with a Condition there under  
 written for the Payment of 500 *l.* (*not said to*  
*whom*) at a Day yet to come, for (instead of)  
 the aforesaid 500 *l.* in the said second Promise  
 mentioned, which said Writing Obligatory *Travers.*  
 was then and there delivered to the same *W.*  
 and he the said *W.* then and there accepted  
 of the same Writing Obligatory, without that  
 that the aforesaid *D.* did take upon himself

## Declarations, &amp;c.

*By Notes.* (promise) on the said 13th Day of *August*, or at any after the making of the said Writing Obligatory in Manner and Form as the aforesaid *W.* hath in his Declaration above alledged. And this he is ready to aver; whereon he prays Judgment, if the aforesaid *W.* ought to have his Action thereof against him.

*Replication.*

*To which Plea the Plaintiff replied thus.*

And the aforesaid *W.* saith, That he for any thing before alledged ought not to be precluded (barred) from having his Action against the aforesaid *D.* because as to the aforesaid Plea of the said *D.* to the said first Promise and Assumption in the Declaration above-mentioned, the same *W.* saith, That he the said *W.* did not by any Indorsement on the Bill aforesaid, order the Contents of the same Bill to be paid to the aforesaid *Timothy Johnson*, in Manner and Form as the said *D.* hath above in his Plea alledged. And this he prays to (may) be inquired by the Country. And as to the aforesaid Plea of the said *D.* as to the said second Promise and Assumption in the Declaration aforesaid above-mentioned, the same *W.* saith, That he for any thing before alledged ought not to be precluded (barred) from having his Action aforesaid, as to the same second Promise and Assumption, because he saith, That he the aforesaid *D.* did not become bound to the same *W.* in 1000 *l.* by his Writing Obligatory with a Condition there under-written, for the Payment of the aforesaid 500 *l.* in the aforesaid second Promise, mentioned in Manner and Form as the aforesaid *D.* hath above in his Plea alledged. And this he likewise prays may be inquired by the Country.

To

To which Replication the Defendant demurred  
thus :

And the aforesaid *D.* as to the said Plea of the said *W.* above, by replying, pleaded, saith, That the said Plea, and the Matter therein contained, are not sufficient in Law to maintain (support) the said *Williams*, in his having his said Action against him *D.* To which said Replication he the said *D.* hath no need, nor is he bound by the Law of the Land in any Manner to answer. And this he is ready to aver ; whereof he the said *D.* prays Judgment as before, if the said *W.* ought to have his said Action against him. Demurrer.

Whereupon the Plaintiff joins in Demurrer, viz.

And the aforesaid *W.* saith, That the Plea Joinder in  
Demurrer. aforesaid by him *W.* above, by replying (or in the Replication above) pleaded. And the Matters therein contained, as the same is therein in Manner and Form pleaded, are good and sufficient in Law to maintain (support) the said *W.* in having his said Action against him *D.* which said Plea, and the Matter therein contain'd, he the same *W.* is ready to aver and prove, as the Court here shall think fit. And because the aforesaid *D.* doth not answer (or hath not answered) to that Plea, nor that hitherto in any Manner denied, he the same *W.* prays Judgment ; and that his Damages aforesaid by Occasion of the Premisses be adjudged to him.

And because the Justices here will advise themselves of and upon the Premisses, before they render (give) their Judgment thereof, a A Dies Dat.  
est. or Conti-  
nuance. Day is given to the Parties aforesaid here until

## Declarations, &amp;c.

*By Notes.* (Such a Return or Paper Day) to hear their Judgment thereof (and if the Judges do not then give Judgment you are to enter further Continuances thus) for that the Justices here (*i. e.* in *C. B.*) are not yet advised of rendring (giving) their Judgment of and upon the Premises, a further Day is given to the Parties aforesaid here until (*&c. i. e.* another like Day) and so on.

And Note, after hearing Council on several such Adjournments, Judgment in the Case *supra* was in *Michaelmas* Term 1717, given for the Plaintiff.

See Lilly's  
Entr. 41.  
+ Salk.

I shall add only one Precedent more under this Head of Declarations on Promissory Notes, *viz.* That in the Case of *Eastman* and *Butler*, where the Action was brought by the Assignees on several Promissory Notes, given by the Defendants Servants in their own (or their Masters) Names, payable to the Bankrupts.

In *C. B.* on  
divers Promissory Notes  
by Assignees  
of Commissioners of Bank-  
rupts.

London to wit. **T**. *Butler*, late of *London*,  
Merchant, was attach-  
ed to answer to *N. E.* and *R. M.* Assignees  
of the Debts, Goods and Chattels of *D. M.*  
are on, and *A. S.* Bankrupts, according to  
the Form of the Statute of Bankrupts lately  
made and provided, of a Plea of Trespass on  
the Case; and whereof the same *N.* and *R.*  
by *J. P.* their Attorney complain. That  
whereas the foresaid *D.* and *A.* at the Time of  
the making of the several Promissory Notes  
hereafter mentioned, being in Company (*As-*  
*sociates*) and Partners in the Trade (*Business*)  
of Merchandizing, one *R. B.* after the 1st Day  
of *May* in the Year of the Lord 1705, to wit, on  
the

# On Promises.

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the 18th Day of *August* 1714, being then an Agent for (to) the said *T. B.* who was then a Merchant. And the said *R.* (being at that Time also usually intrusted by him the said *T. B.* to make and sign Promissary Notes for the Payment of Money for him the aforesaid *T.*) to the Person or Persons in the same Notes named, had at *London* aforesaid, *to wit*, in the Parish of, &c. on the Day and Year last mentioned, made a Promissary Note in writing, subscribed with the proper Hand of him the said *R. B.* bearing date the same Day and Year last aforesaid; and by the same Note promised to pay to the foresaid *D.* and *A.* by the Name of *Messieurs Marcon* and Company, or Order, 200 *l.* Sterling in three Months and fifteen Days after Date of the same Note, *value Receiv'd*, for his said Master *T. Butler*, by Reason whereof, and by Force and Virtue of the Statute in such Case thereof, lately made and provided, he the same *T.* ought to be charged, and became, and was chargeable (liable) to pay to the said *D.* and *A.* the aforesaid 200 *l.* in the said Note mentioned. And the said *T. B.* being so (liable) chargeable to pay, did in Consideration thereof, afterwards, *to wit*, the 9th Day of *May*, in the Year of the Lord 1715, at *London* aforesaid, in the Parish and Ward aforesaid, assume (take) upon himself, and to the aforesaid *N. R.* then and there faithfully promised, That he the said *T.* would well, and faithfully pay and content (satisfy) the said 200 *l.* in the said Note mentioned, unto the said *N.* and *R.* when he the said *T.* should be thereto afterwards required: And also *whereas*, afterwards and after the foresaid first Day

By Notes.

1st Count of a Note for 200 *l.*

Promissory Notes.

2d Count on another Note for 143 *l.* 10s.

## Declarations, &amp;c.

*By Notes.* Day of *May*, in the Year of the Lord 1705, *to wit*, on the foresaid 18 Day of *August* in the Year of the Lord 1714, he the foresaid *R. B.* being also then the Agent of the foresaid *T. B.* and by him usually intrusted to sign Promissary Notes for the same *T.* for the Payment of the Money in the same mentioned, to the Person or Persons in the same nominated, had at *London* aforesaid, in the Parish and Ward aforesaid, made a certain other Promissary Note in writing, subscribed (underwritten) with the proper Hand of the said *R. B.* bearing Date the same Day and Year last aforesaid, and by the same Note promised to pay to the foresaid *D.* and *A.* by the Name of Messieurs *Marcon* and Company or Order, 143 *l.* 10 *s.* Sterling, in three Months and 15 Days after Date of the same Note, *Value receiv'd*, for his Master the said *T. B.* by Reason whereof, and by Force of the Statute in such Case lately made and provided, he the same *T.* became chargeable (lyable) to pay unto them the said *D.* and *A.* the foresaid 143 *l.* 10 *s.* in the same Note last mentioned contained, and being so chargeable with (lyable to) the Payment thereof, he the said *T.* in Consideration thereof, did afterwards, *to wit*, on the foresaid ninth Day of *May* in the said Year of the Lord 1715, at *London* aforesaid, in the Parish and Ward aforesaid, assume (take) upon himself, and to the same *N.* and *R.* then and there faithfully promised, That he the same *T.* would well and faithfully pay and content (satisfy) the foresaid 143 *l.* 10 *s.* in the same Note last mentioned contained, unto the foresaid *N.* and *R.* when he should be thereunto afterwards

wards required. *And also, whereas;* afterwards, *By Notes.*  
 and after the foresaid 1st Day of *May* in the  
 Year of the Lord 1705, *to wit,* on the fore-  
 said 18th Day of *August*, in the Year of the  
 Lord 1714, *aforesaid;* he the foresaid *R. B.*  
 being then also the Agent of the foresaid *T.*  
 and by him *T.* usually intrusted to sign Pro-  
 missary Notes for him the said *T.* for the  
 Payment of the Money in the same Notes  
 mentioned, to the Person or Persons therein  
 named (nominated) had at *London* *aforesaid,*  
*to wit,* in the Parish and Ward *aforesaid,*  
 made a certain other Promissary Note in  
 Writing, subscrib'd with the proper Hand of  
 the foresaid *R.* bearing Date, (*&c. as before for*  
*1711 l. 15 s. and a 4th Count for 1721. 10 s.*  
*10 d. in the same Form.*) And also *whereas*  
 the foresaid *T.* afterwards, *to wit,* the same  
 Day and Year last *abovesaid,* at *London* *afore-*  
*said,* in the Parish and Ward *aforesaid,* was  
 indebted to the same *N. and R.* as Assignees  
 of the Debts of the foresaid *D. and A.* the  
 Bankrupts *aforesaid,* in 695 l. 15 s. of law-  
 ful Money of this Kingdom, for divers  
 Goods, Wares and Merchandizes of the fore-  
 said *D. and A.* and by them the said *D. and*  
*A.* unto the same *T.* and at his Instance and  
 Request before that Time sold and delivered.  
 And being so indebted, he the foresaid *T.* af-  
 terwards, *to wit,* on and at the same Day,  
 Year and Place last above mentioned, did in  
 Consideration thereof, assume, take upon him-  
 self, and to the same *N. and R.* faithfully pro-  
 mised, That he the foresaid *T.* would well and  
 faithfully pay and content, (satisfy) the fore-  
 said 695 l. 15 s. unto the said *N. and R.* when  
 he should be thereunto afterwards required.  
 And

3d Count on  
 another Note  
 for 1711 l. 15 s.

And a 4th for  
 1721 l. 10 s.

5th Count an  
 Assumpsit for  
 Goods of the  
 Bankrupts  
 delivered to  
 the Defendant

*By Notes.*

*6th Count a  
Quantum  
Meruit on an  
implied Pro-  
mise.*

And also *whereas* the foresaid *T.* afterwards, *to wit*, the same Day, Year and Place last aforesaid; in Consideration, That the foresaid *D.* and *A.* had, at the Request of him *T.* before that Time, sold and delivered to the same *T.* divers other Goods, Wares and Merchandizes of them the said *D.* and *A.* he the said *T.* did then and there, in Consideration thereof, assume, (take) upon himself, and to the same *N.* and *R.* (being Assignees of the Debts of the foresaid *D.* and *A.* Bankrupts as aforesaid) faithfully promise to pay to them the said *R.* and *N.* such Sums of Money as the said Goods, Wares and Merchandizes last mention'd, were reasonably worth at the Time of their said Sale and Delivery. And the said *N.* and *R.* do in Fact say, That the said Goods, Wares and Merchandizes, last mentioned, were reasonably worth at that Time of their said Sale and Delivery to the said *T.* one other Sum of 695 l. 15 s. of like lawful Money, *to wit*, at London aforesaid, in the Parish and Ward aforesaid, whereof the foresaid *T.* then and there had Notice. Yet he the foresaid *T.* not regarding his said several Promisses and Assumptions so made to the said *N.* and *R.* as aforesaid, but contriving and fraudulently intending, &c. (*See before.*)

*Herewith I shall conclude the Precedents of Declarations, &c. on Promissory Notes; and in the next Place shew some Forms thereof on Bills of Exchange, and this as well of Declarations on Bills of Exchange on Inland Bills, as on Foreign Bills.*

*A Declaration on an Inland Bill of Exchange, by the Assignee against the Drawer.*

*Middlesex to wit.* J. M. Complains of J. S. In B. R. on an Inland Bill by the Assignee against the Drawer. See Lilly's Entr. 44.  
 J. in Custody of the Marshal of the Marshalsea of the Lord the now King, before the King himself; for that, *to wit*, That *whereas* the foresaid J. Sleddal on the 13th Day of April 1717, at Westminster in the County aforesaid; (he then being a Person using Commerce, *to wit*, at Westminster aforesaid) had according to the Use and Custom of Merchants made his certain Bill of Exchange in Writing, subscribed with his Hand, bearing Date the same Day and Year, and directed the same Bill of Exchange to one K. E. by which said Bill of Exchange the same J. S. requested (required) the foresaid K. E. to pay to one T. P. or his Order, the Sum of 20 l. twenty Days after Sight of the same Bill, Value received, and to place it to the Account of Subsistence for the Use of the Company of Invalids under Capt. Spicer in Garrison at Jersey, and that it should be allow'd on the Account by the foresaid John Sleddall; and the said T. P. afterwards, *to wit*, on the 14th Day of May in the Year of the Lord abovesaid, at Westminster aforesaid, by his Indorsement upon that Bill of Exchange made according to the Use and Custom of Merchants, ordered the Contents of the same Bill, *to wit*, the said 20 l. to be paid to one J. F. or to his Order; which said J. F. afterwards, *to wit*, on the 27th Day of May, in the Year

Assignment of the Bill according to the Custom of Merchants.

Bill assigned over by Indorsement to the Plaintiff.

**Inland.**

*Acceptance  
refused, and  
Notice to the  
Drawer,  
whereby he  
became charge-  
able.*

*Indebitatum  
Assumpsit.  
for Money re-  
ceiv'd by the  
Drawer to the  
Plaintiff's  
Use.*

Year aforesaid, at *Westminster* aforesaid, did by his Indorsement made upon that Bill, according to the Usage and Custom of Merchants, order the Contents of the same Bill, *to wit*, the said 20 *l.* to be paid to the foresaid *J. M.* or his Order. And the same *J. M.* in Fact saith, That he afterwards, *to wit*, the 1st Day of *June* in the Year aforesaid, at *Westminster* aforesaid, did shew the same Bill to the before named *K. E.* with the said Indorsements thereupon made, and then and there requested him to accept the said Bill. But he the said *K. E.* (did not accept the said Bill, but) then and there altogether refused to accept the same, or ever to pay the said 20 *l.* in the same Bill mentioned, of which Premisses the foresaid *J. S.* afterwards, *to wit*, on the 8th Day of *June*, in the Year aforesaid, at *Westminster* aforesaid, had Notice, by Reason of which said Premisses he the said *J. Sled-dal*, according to the Custom of Merchants became lyable to (chargeable with) the Payment of the said 20 *l.* in the said Bill of Exchange mentioned; and he the said *J. S.* being so lyable, (chargeable) afterwards, *to wit*, the same Day and Year at *Westminster* aforesaid, did in Consideration thereof assume (take) upon himself, and to the same *J. M.* then and there faithfully promised, That he the said *J. S.* would well and faithfully pay and content (satisfy) to the said *J. M.* the same 20 *l.* and also *whereas* the foresaid *J. S.* was on the 30th Day of *August* in the Year above said, indebted unto the foresaid *J. M.* in 80 *l.* for Moneys before then had and received by the said *J. S.* to the Use of him *J. M.* and being so indebted, he the fore-

## On Bills of Exchange.

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*Indiano.*

foresaid *J. S.* did on the Day and Year last above-*said*, at *Westminster* afore-*said*, in Consideration thereof assume (take) upon himself, (*Ec. as usual concluding*) That he the said *J. S.* had not paid any of the Sums so assumed (promised) altho' he had been by the said *J. M.* thereto requested, *to wit*, on the 31st Day of *August* in the Year afore-*said*, at *Westminster* afore-*said*, and that he the said *J. S.* still refused, *Ec.* to the Damage of the said *J. M.* 80*l.* and thereupon he brings his Suit.

*A Declaration on two Foreign Bills of Exchange payable by the Custom of Merchants.*

*Michaelmas the Fifth of George I.*

London to wit. *J. Aques Henriquez*, late of London Merchant, was attached to answer to *William Law* of a Plea of Trespass on the Case, and whereof the same *W.* by *J. P.* his Attorney Complains, That whereas the fore-*said J. H.* on the 11th Day of *May* in the 4th Year of the Reign of the Lord *George* the Second, now King of *Great Britain*, at *London*, in the Parish of the Blessed *Mary* of the Arches, in the Ward of Cheap, in Consideration that the said *W. L.* being then and there a Merchant, and using Commerce, had at the Special Instance and Request of him *J. H.* according to the Custom of Merchants in such Case used and approved, made two several Bills subscribed with the proper Name and Hand of him *W. L.* for

*In C. B. On two foreign Bills of Exchange for 4500 French Livres.*

**Foreign.** for one and the same Sum of Money, and had directed the same several Bills of Exchange to one *J. L.* residing at *Paris* in the Parts beyond the Sea, and also using Commerce, and then the Director of the Bank there, and had by the same several Bills of Exchange required the said *J. L.* to pay the same at usance in Manner and Form following, *to wit*, the same *W.* by the first of his said two Bills of Exchange required the said *J. L.* to pay to the Order of the said *J. H.* 4500 *Livres Tournois in Specie at Usance Value of himself.* And the same *W.* by the second of his said two Bills of Exchange, required the said *J. L.* to pay (*his said first Bill of Exchange not being paid*) to the Order of the said *J. H.* 4500 *Livres Tournois in Specie at Usance and Value of himself.* And the same two Bills of Exchange so as aforesaid, made, subscribed and directed, he the said *Jaques* did assume (take) upon himself, and unto the same *W.* (on the Day and Year aforesaid, at *London* aforesaid, in the Parish and Ward aforesaid) faithfully promise, That he the said *J.* would receive the same two several Bills of Exchange of the same *W.* and also well and faithfully pay and content (satisfy) unto the same *W.* 253 *l.* 2 *s.* 6 *d.* Sterling of lawful *English* Money for the same, when he should be afterwards thereunto required, and the foresaid *W.* in Fact saith, That he trusting, (crediting or giving faith) to the foresaid Promises and Assumptions of the said *J.* afterwards, *to wit*, on the same 12th Day of *May* in the Year aforesaid, at the Parish aforesaid, did according to the said Usage and Custom of Merchants, make two several Bills of Exchange for

## On Bills of Exchange.

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Foreign.

for one and the same Sum of Money subscribed with the proper Hand and Name of him *W. L.* bearing Date at *London* aforesaid on the same Day and Year last mentioned, and directed the same two several Bills of Exchange to the said *J. L.* by the Name of *Mr. John Law* Director of the Bank at *Paris* in Parts beyond Sea, and by the same several Bills of Exchange required the said *J. L.* to pay at Usance in Manner and Form following, *to wit*, he the same *W.* by the first of his said two Bills of Exchange required the said *J. L.* to pay to the Order of the said *J. H.* 4500 *Livres Tournois* in Specie at Usance Value of himself, as by Advice. And the same *W.* by the second of his said two Bills of Exchange required the same *J. L.* to pay (his said first Bill of Exchange being unpaid) to the Order of the said *Jaques H.* 4500 *Livers Tournois* at Usance Value of himself, as by Advice. And the foresaid *W. L.* further saith, That he the said *W.* afterwards, *to wit*, on the 31st Day of *May* in the Year aforesaid, at the Parish and Ward aforesaid, did deliver to the said *Jaques H.* his said first Bill of Exchange so subscrib'd, and made and directed as aforesaid, which said Bill he the said *Jaques H.* did then and their Receive : And the foresaid *W.* further saith, That he afterwards, *to wit*, on the said 31st Day in the Year aforesaid, at *London* aforesaid, in the Parish and Ward aforesaid, did offer to deliver unto the said *J.* his said second Bill of Exchange so subscribed, and made and directed as aforesaid, but he the said *Jaques* did not receive his said second Bill of Exchange, and then and there wholly refused to receive the same Bill. And the foresaid *Jaques H.*

E

con-

**Foreign.**

*Also Indeb.  
Assumpfit.*

*And a Mu-  
tuatus.*

contriving and fraudulently intending craftily and subtilly to deceive and defraud the foresaid *W.* of the foresaid 253 *l.* 2 *s.* 6 *d.* Sterling, hath not yet paid the said 253 *l.* 2 *s.* 6 *d.* to the said *W.* or in any Manner contented, (satisfyed) him for the same, altho' the said *Jaques* was afterwards, *to wit*, the same Day and Year at *London* aforesaid, in the Parish aforesaid, and at divers other Times both before and since was and hath been required to do it. And also *whereas* the foresaid *Jaques* on the same Day and Year last above mentioned, at *London* aforesaid, in the Parish and Ward aforesaid, was indebted unto the foresaid *W.* in 300 *l.* of lawful Money of *Great Britain*, for the like Sum of the Moneys of him *W.* by the foresaid *W.* at the Special Instance and Request of him *Jaques* for the same *Jaques* before then deposited (laid out) lent and paid (advanced) and being so indebted, he the same *Jaques* in Consideration whereof, afterwards, *to wit*, the same Day and Year last aforesaid, at *London* aforesaid, in the Parish and Ward aforesaid, did assume (take) upon himself, &c. (*as usual in Indeb. Assumpfits*) after which a *Mutuatus* is added thus: And also *whereas* the foresaid *Jaques H.* afterwards, *to wit*, the same Day and Year last above said, at *London* aforesaid, in the Parish and Ward aforesaid, was indebted to the foresaid *W.* in other 300 *l.* of like lawful Money, for the like Sum of Money of him *W.* at the Special Instance and Request of him *Jaques H.* by the same *W.* unto the foresaid *Jaques* before that Time lent and accomodated, and being so thereof indebted, he the same *Jaques* in Consideration thereof, did afterwards, *to wit*,

## On Bills of Exchange.

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*Foreign.*

*wit*, the same Day and Year last abovesaid, at *London* afore said, in the Parish and Ward afore said, assume (take) upon himself, and unto the same *W.* then and there faithfully promised, That he the said *Jaques* would well and faithfully pay and content (satisfy) unto the same *W.* the fore said Sum of Money last mentioned, when he should be afterwards thereunto required. Yet the fore said *Jaques* not regarding his several Promises and Assumptions afore said, so made in the Form afore said, but contriving and fraudulently intending, &c. (as usual.)

And the fore said *Jaques H.* by *T.W.* his Attorney comes and defends the Force and Injury, when, where, &c. and saith, That the fore said *W. L.* ought not to have his Action thereof against him, because he saith, That after the making of the several Promises and Assumptions afore said, in the said Declaration of the said *W.* above specified, and before the suing forth of the Original Writ of him *W.* to wit, the 20th Day of *August*, in the Year of the Lord 1718, at *London*, to wit, in the Parish of, &c. afore said, he the same *Jaques H.* did pay unto the said *W.* 253 *l.* Pounds Sterling, in full Satisfaction and Discharge of the fore said several Promises and Assumptions (Undertakings) in the said Declaration above mentioned, which said 253 *l.* Sterling he the said *W.* did then, receive and accept of the said *Jaques* in full Satisfaction and Discharge of the Promises and Assumptions afore said; and this he is ready to aver, whereof he prays Judgment, if the fore said *W.* ought to have his said Action thereof against him, &c.

*The Plea.*

E 2

And

*Foreign.*

*Replication.*

And the foresaid *W.* saith, That he by any Thing before alledged by the said *Jaques* ought not to be precluded (barred) from having his foresaid Action thereof, against the said *Jaques*, because he saith, That the same *Jaques H.* did not pay unto said *W.* the foresaid 253*l.* Sterling, in full Satisfaction and Discharge of the foresaid several Promises and Assumptions above-mentioned, in the Declaration of him *W.* in Manner and Form as the same *Jaques H.* hath in Pleading thereof above alledged; and this he prays, that it be inquired by the Country.

*Demurrer.*

And the foresaid *Jaques H.* saith, That the Plea of the foresaid *W. L.* above, by Pleading replied, and the Matter therein contained are not sufficient in Law for him the said *W.* to maintain the having his foresaid Action thereof, against him the said *W.* And that he the said *Jaques* hath no Necessity, nor is by the Law of the Land bound in any Manner to answer to that Plea (so) pleaded in the Manner and Form aforesaid; and this he is ready to aver, whereof (wherefore) for Default of a sufficient Replication of the said *W.* in this particular, he the same *Jaques* prays Judgment, and that the foresaid *W.* be barr'd from having his said Action thereof against him.

*Joinder.*

And the foresaid *W. L.* for that he hath above by Replying, alledged sufficient Matter in the Law for him the said *W.* to maintain the having his Action aforesaid, against the foresaid *Jaques H.* (which said Matter) he is ready to aver, and which said Matter the foresaid *Jaques* hath not denied, nor in any Manner answered thereto, but altogether  
(wholly)

(wholly) refuses to admit (*i. e.* join Issue on) that Verification prays Judgment and his Damages, by Occasion of the not performing of the several Promises and Assumptions aforesaid; to be adjudged to him (by the Justices of the Court here.) And because the Justices here will advise themselves of and upon the Premises, before they give (their) Judgment thereof, a Day is given to the Parties aforesaid to be here (at such a Return) to hear their Judgment thereof. And because the same Justices here are not yet advised, &c. and so continue it till Judgment given. Which in this Case was for the Plaintiff.

*A Declaration upon a Bill of Exchange directed by a Merchant at Lisbon to another at London, which the Defendant accepted, but afterwards refused to pay, wherein the Custom of Merchants and Factors at London and Lisbon, touching Bills of Exchange, is set forth.*

London to wit. **J**. T. late of London, Merchant, attached to answer  
to R. G. &c. That, whereas the City of London in England is, and from the Time whereof the Memory of Man is not to the contrary, hath been an ancient City: And also whereas the City of Lisbon in Portugal, in the Parts beyond the Sea, also is, and during the whole Time aforesaid hath likewise been, an antient City. And also whereas, at London aforesaid, there is, and from the Time

In C. B.  
On a Bill  
drawn at Lisbon, payable in London,  
Payment refused after Acceptance.  
N. B. The Custom of London, &c. See Brown's Vade Mecum, 22,

Foreign.

whereof the Memory of Man is not to the contrary, hath been a Custom, as well amongst the Merchants (and *others*) residing at *London* aforesaid, and elsewhere within *England*, as amongst the Merchants and others residing at *Lisbon* aforesaid, used and approved, *to wit*, that if any such Merchant, or any other Person or Persons, who have received any Bill of Exchange from any Merchant, or any other Person or Persons, in the Part or Parts beyond the Sea, who made the same Bill or Bills of Exchange, and subscribed the same with his or their Hand or Hands, according to the Laws and Customs of Merchants, and had confessed himself or themselves to have received the said Bill or Bills of Exchange, and had accepted the same Bill or Bills; that then such Merchants, or other Person, who had then so confessed himself to have received such Bill or Bills of Exchange, and to have accepted the same, is liable (chargeable) and from the Time whereof the Memory, &c. hath been according to the Laws and Customs of Merchants, liable (chargeable) to pay to such Person or Persons as in the said Bill or Bills were nam'd (directed) to be paid to, at the Day or Days in the same Bill or Bills specified, such Sum or Sums of Money, as in the same Bill or Bills of Exchange should be mentioned. And the aforesaid *R. G.* (Merchant) in Fact saith, That one *T. K.* Merchant, residing at *Lisbon* aforesaid, on the 1st Day of *September*, in the Year of the Lord 1730, according to the Computation used at *Lisbon* aforesaid, being the 11th Day of *September*, in the said Year 1730, according to the Computation used here in *England*, by  
his

Averment.

his certain Bill of Exchange, subscribed with the Hand of him T. K. and here, in Court produced, and dated the same Day and Year last mentioned, required the aforesaid J. T. (the Defendant) to pay unto the aforesaid R. G. the now Plaintiff, the Sum of 115 l. 17 s. 6 d. of lawful Money of England (*Great-Britain*) upon thirty Days Sight; he the said Defendant knowing the said Bill of Exchange to be so directed, and acknowledging that he had received the same Bill afterwards, to wit, on the 10th Day of *October*, in the fifth Year of the said Lord the now King, at *London* aforesaid, in the Parish of the blessed *Mary of the Arches*, in the Ward of *Cheap*, the said Bill of Exchange so directed to the Defendant for Payment of the aforesaid 115 l. 17 s. 6 d. to the said Plaintiff as aforesaid, he the said J. T. accepted the same Bill, and promised Payment thereof, according to the Tenor thereof. Yet the said J. T. not regarding the said Receipt, and Acceptance of the said Bill, but contriving, and fraudulently intending, craftily and subtilly to deceive and defraud the said R. G. in this Particular, hath not paid the said 115 l. 17 s. 6 d. to the said R. G. but altogether refuses, &c. tho' requested, &c. (*as before.*)

*Foreign.*

*A Declaration (carefully drawn) upon two Bills of Exchange, directed by the Defendant, a Merchant, to his Factor, for Payment of Money in London, in Consideration of Money received at Antwerp, of the Plaintiff's Factor there.*

In B. R.  
On two Bills  
of Exchange  
for Payment  
in London,  
of Money re-  
ceived at  
Antwerp.  
Bro. Vade  
Mecum, 23,  
34.

London to wit. **R.** H. Alderman of London, and a Merchant-Adventurer of England, complains of *M. C.* the Younger, Merchant, in Custody of the Marshal of the Marshalsea of the Lord the now King, now here; for that, to wit, (such a Day and Year of the Lord) at Antwerp, in the Parts beyond the Sea, he the aforesaid *R. H.* by the Hands of one *R. J.* then the Factor of the said *R. H.* had at the special Instance and Request of one *E. C.* the then Servant (or Agent) of him *M.* then and there yielded up, and delivered to the said *E. C.* then being at Antwerp aforesaid, to the proper Use of him *M.* the Sum of 107 l. 6 s. 8 d. in Flemish Money, to be paid to the aforesaid *R.* in England; he the said *R. J.* in Consideration thereof, made a Bill of Exchange for Payment of 70 l. Sterling, at double Usance, according to the Use of Merchants, to wit, at the End of two Months then next following, by Way of Exchange, to wit, to pay at the Rate of 30 s. and 8 d. Flanders Money, for every Pound of current Sterling Money. And whereas the aforesaid *E. C.* upon the Receipt of the aforesaid 107 l. 6 s. 8 d. Flemish Money, for the Use of the said *M.* as afore-

aforesaid, on the same (*Day and Year supra*) at *Antwerp* aforesaid, had according to the Use of Merchants delivered to the aforesaid *R. J.* then, there, the Factor of him *R. H.* to the Use of him *R. H.* two several Bills of Exchange, then subscribed with the proper Hand and Name of the said *E. C.* and directed to the said *M. C.* the then Master of the said *E. C.* By the first of which said Bills of Exchange, he the said *E. C.* then and there required and appointed the aforesaid *M.* to pay at double Usance, *to wit*, at the End of two Months then next following, unto the aforesaid *R. H.* or the Bearer of the said first Bill of 70 *l.* Sterling, in *London* aforesaid, (his said second Bill not being paid.) And by the second Bill of the said two Bills of Exchange, he the aforesaid *E.* in like Manner then and there required and appointed the aforesaid *M.* to pay at double Usance, *to wit*, at the End of two Months then next following, unto the aforesaid *R. H.* or the Bearer of the said second Bill, 70 *l.* Sterling, in *London* aforesaid (his said first Bill being then not paid.) And also whereas the aforesaid *R. H.* afterwards and within the aforesaid two Months, *to wit*, on the first Day of *October*, in the said Year of the Lord, &c. at *London* aforesaid, in the Parish and Ward aforesaid, did, according to the Use of Merchants, shew and deliver to the aforesaid *M.* the said second Bill of Exchange, subscribed with the proper Hand and Name of the said *E. C.* the said first Bill of Exchange being then not paid, nor was any Part of the said 70 *l.* Sterling, at that time paid or satisfied; he the aforesaid *M.* afterwards, *to wit*, on the said first

Foreign.

Payment of  
Part, and Re-  
fusal of the  
Residue.

first Day of *October*, in the Year, &c. above-  
said, at *London* aforesaid, *to wit*, in the Pa-  
rish and Ward aforesaid, for and in Confide-  
ration of the Premisses, did assume (take)  
upon himself, and to the aforesaid *R.* did  
then and there faithfully promise, That he  
the said *M.* would well and faithfully pay  
and content (satisfy) unto the said *R.* the  
aforesaid 70 *l.* Sterling, at *London* aforesaid,  
at the End of the said two Months, according  
to the Tenor of the same Bill. And the said  
*R.* in Fact saith, That he the said *M.* did  
afterwards (*to wit*, such a Day, &c.) pay un-  
to the aforesaid *R.* 40 *l.* Parcel of the said  
70 *l.* But he the said *M.* not regarding his  
Assumption (Undertaking) and Promise a-  
foresaid; but (as to the Payment of the Re-  
sidue of the said 70 *l.*) contriving and frau-  
dulently intending, craftily and subtilly to  
deceive and defraud the said *R.* of 30 *l.* being  
the Residue of the said 70 *l.* hath not paid,  
and still doth refuse to pay the said 30 *l.* to  
the said *R.* altho' the said *M.* was after-  
wards, *to wit*, on the 10th Day of *Janua-*  
*ry*, in the Year, &c. aforesaid, at *London*  
aforesaid, *to wit*, in the Parish and Ward  
aforesaid, requested by the said *R.* to do it.  
Whereof the said *R.* saith, That he is the  
worser, and hath Damage to the Value of  
100 *l.* and thereof he brings his Suit, &c.

*A Decla-*

*A Declaration on a foreign Bill of Exchange on Delivery of 100 l. at London, to be paid (at single or one Months Usance at Amsterdam) by the Defendant, who drew two Bills on one T. W. there, and promised if W. did not pay, &c. he the Defendant would pay it on Request, with the Pleadings, and a Special Verdict thereon.*

London to wit. **S.** S. Merchant, complains of *In B. R.*  
**S. W. B.** in Custody, &c. *On Two Bills*  
 for that to wit, That whereas on the sixth *for Money de-*  
 Day of D. (in such a Year of the now King) *livered here*  
 at London aforesaid, to wit, in the Parish, *to be paid at*  
 &c. he the aforesaid S. S. being then a Mer- *Amsterdam.*  
 chant, had at the special Instance and Re-  
 quest of him W. then and there, at single  
 Usance, (i. e. one Month's Payment) deli-  
 ver'd to the aforesaid W. then also a Mer-  
 chant; to the proper Use of him W. 100 l.  
 of lawful Money of Great-Britain, of the  
 proper Moneys of him S. and to be paid at  
 the End of one Month then next following,  
 by Way of Exchange unto him the said S.  
 the Sum of 150 l. 11 s. in current Money of  
 Holland in Amsterdam beyond the Sea. And  
 whereas he the aforesaid W. upon the Re-  
 ceipt of the aforesaid 100 l. as aforesaid, had  
 on the same sixth Day of December, in the  
 Year, &c. aforesaid, at London aforesaid,  
 to wit, in the Parish, &c. aforesaid, for  
 the Consideration aforesaid, deliver'd ac-  
 cording to the Use (Custom) of Merchants,  
 unto

Foreign.

unto the aforesaid *S. S.* two several Bills of Exchange, subscribed with the proper Hand and Name of the said *W. B.* and directed to one *T. W.* then being (residing) in *Amsterdam* aforesaid, in the said Parts beyond Sea; and by the same Bills requiring and appointing the aforesaid *J.* to pay at single Usance his said first Bill of Exchange, (the said second Bill not being paid) to one *G. C.* or Bearer, of the said Bill of Exchange, to the Use of him *R. C.* 150 *l.* 11 *s.* 8 *d.* of *Flemish* Money, current in *Amsterdam* aforesaid, at the Usance there, from *London* aforesaid, *to wit*, at the End of one Month from thence next following. And by the second Bill of the said two Bills, he the said *W.* did then and there likewise request and appoint the aforesaid *T. W.* to pay unto the aforesaid *G. C.* to the Use of him *S. S.* 150 *l.* 11 *s.* 8 *d.* of like *Flemish* Money, current in *Amsterdam* aforesaid (the said first Bill of Exchange of him the said *W.* therein mentioned being unpaid) he the said *W.* afterwards, *to wit*, on the aforesaid sixth Day of *December*, in the Year of (the now King, &c.) aforesaid, at *London* aforesaid, in the Parish, &c. for and in Consideration of the Premisses, did assume (take) upon himself, and unto the aforesaid *S. S.* then and there faithfully promised, That if the aforesaid *T. W.* did not accept the aforesaid Bills of Exchange, or one of them from the aforesaid *S. S.* nor pay the said 150 *l.* 11 *s.* 8 *d.* current *Flemish* Money, unto the said *G. C.* to the Use of him *S. S.* at the End of one Month then next ensuing. That then he the said *W.* would well and faithfully pay to the said *S. S.* 100 *l.* of  
lawful

## On Bills of Exchange.

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Foreign.

lawful Money of *Great-Britain*, when he should after the said Month is ended be thereunto required. And the same *S.* in Fact saith, That he the said *S.* afterwards and within the said one Month, *to wit*, on the 26th Day of *December*, in the Year, *Ec.* aforesaid, at *Amsterdam* aforesaid, did shew and offer the aforesaid *T. W.* the aforesaid two Bills of Exchange, and did then and there request the aforesaid *T. W.* to accept the aforesaid two Bills of Exchange, or one of them : And that he the said *T. W.* did then and there wholly refuse to accept the same two Bills of Exchange, or either of them. Whereupon he the said *S.* did afterwards, and within the aforesaid Month, *to wit*, on the 27th of *December*, in the Year, *Ec.* aforesaid, at *Amsterdam* aforesaid, protest the same Bills, according to the Use (Custom of Merchants.) And afterwards, *to wit*, on the 20th Day of *March*, in the Year, *Ec.* *to wit*, in the Parish, *Ec.* aforesaid, he the same *S.* gave Notice to the aforesaid *W.* That the said Bills, and either of them, were refused to be accepted by the aforesaid *T. W.* and likewise gave Notice to the said *W.* of the Protest of the said Bills so made as aforesaid. And further, he the said *S.* in Fact saith, That the aforesaid *T. W.* did not at the End of the said one Month (whereon it ought to have been paid) or at any Time (before or) afterwards, did not pay to the aforesaid *G. C.* the aforesaid 150 *l.* 11 *s.* 8 *d.* *Flemish* Money, to the Use of the said *S.* (according to the Tenor of the said Bills) yet the aforesaid *W.* not regarding his Promises and Assumptions aforesaid; but contri-

*Averment of  
Tender and  
Refusal.*

*Protest and  
Notice of Non-  
acceptance.*

*And also of  
Non-payment.*

*Foreign.*

ving and fraudulently intending, craftily and subtilly to deceive and defraud the said *S.* of the aforesaid 100 *l.* of lawful Money of *Great-Britain*, hath not yet hitherto paid the said 100 *l.* of lawful Money of *Great-Britain*, unto the aforesaid *S.* altho' he the said *W.* afterwards, *to wit*, on the 20th Day of *August* (in such a Year of the now King) at *London* aforesaid, *to wit*, in the Parish and Ward aforesaid, was required (requested) to do it by him the said *S.* whereby he the said *S.* was greatly hurt and worsted (damnified) in his Credit with divers of the said Lord the King's now faithful Subjects; and especially with *A. J.* and *G. K.* to whom he the said *S.* was indebted in the like Sum of 100 *l.* of lawful Money of *Great-Britain*, and to whom he the said *S.* had promised to pay the same 100 *l.* at a Day now past, upon Hopes of the faithful Performance of the said Promise and Assumption so made to the said *S.* by the said *W.* as aforesaid; whereby he the said *S.* saith, That he is the worse, and hath Damage to the Value of 200 *l.* and thereof he brings his Suit, &c.

*Special Damage.*

*The Plea.*  
*Non Assump-*  
*fit, &c.*

*Issue joined*  
*and Venire*  
*awarded.*

And the aforesaid *W. B.* by *T. J.* his Attorney comes and defends the Force and Injury, when, where, and in what Manner the Court of the Lord the now King, now here, shall think fit, and saith, That he did not assume (take) upon himself in Manner and Form as the aforesaid *S.* doth above declare against him, and hereof he puts himself upon the Country, and the aforesaid *S.* likewise. Therefore let a Jury thereof come before the Lord the now King at *Westminster*,

## On Bills of Exchange.

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on *Monday* next after five Weeks of *Easter*, *Foreign*.  
*Ec.* (See the Form of a *Venire* hereafter.)

Afterwards at the Day and Place within *Return of the*  
 contained, came before the well beloved and *Postea*.  
 faithful (trusty) *R. Lord R.* Chief Justice of the  
 Lord the now King, within written (named)  
 assigned for Pleas to be held before the King  
 himself (*E. G.* Esq; being associated to him  
 according to the Form of the Statutes) came  
 as well the within-named *S. S.* as the with-  
 in-named *W. B.* by their Attorneys within  
 contained, and the Jurors sworn, whereof  
 Mention is within made, being returned ac-  
 cording to the Statute in such Case lately  
 made and provided, appeared according to  
 their Names (in the Pannel *Q.*) *to wit, A.* *The Jurors.*  
*B. C. D. E. F. Ec.* (naming them) who be-  
 ing elected, tried, and sworn, do say upon  
 their Oath, That the within-named *S. S.* and *Special Ver-*  
*dict.*  
*W. B.* are Merchants; and that on the sixth  
 Day of *December*, in the Year of the now  
 Lord the King, within-written, the said *S. S.*  
 being a Merchant, did at the special Instance  
 and Request of the within *W. B.* then like-  
 wise a Merchant, deliver to the said *W.* to  
 the proper Use of him *S.* 100 *l.* of lawful  
 Money of *Great-Britain*, being the Money  
 of him *S.* and to be paid by Way of Ex-  
 change to the said *S.* (or Order) 150 *l.* 11 *s.*  
 8 *d.* of current *Flemish* Money, at *Amsterdam*  
 beyond the Sea. And that the said *W.* upon  
 the Receipt of the said 100 *l.* within speci-  
 fied, did on the said sixth Day of *December*,  
 in the Year within specified, for the Consi-  
 deration aforesaid, deliver according to the  
 Usage (Custom) of Merchants, to the afore-  
 said *S.* the within specified two several Bills  
 of

Foreign.

of Exchange, subscribed with the proper Hand and Name of the said *W. B.* and directed to the within specified *T. W.* then being (residing) in *Amsterdam* aforesaid, in the Parts beyond the Seas. And by the same Bills required and appointed the said *T. W.* to pay the same at Usance, to wit, the first of the said Bills of Exchange (the second Bill not being paid) to be paid to the within named *G. C.* or the Bearer of the said Bill of Exchange, to the Use of him *S. S.* 150 *l.* 11 *s.* 8 *d.* current *Flemish* Money, in *Amsterdam* aforesaid, at the Usance from *London* within mentioned. And by the second Bill of Exchange of the said two Bills, he the within named *W.* did then and there likewise require and appoint the said *T. W.* to pay to the aforesaid *G. C.* to the Use of him *S.* 150 *l.* 11 *s.* 8 *d.* of current *Flemish* Money, in *Amsterdam* aforesaid, at the Usance from *London* within mentioned (the said 150 *l.* 11 *s.* and 8 *d.* current *Flemish* Money, mentioned in the said first Bill of Exchange of him *W.* not being paid.) And the Jurors aforesaid do further say upon their Oath, That the Custom, Usage, and Order, (Practice of Merchants) is, and from the Time whereof the Memory of Man is not to the contrary, hath been, That all Sums of Money payable on any Bill of Exchange, at Usance, are to be paid at the End of one Month next following the making of the Bill of Exchange, by which that Sum of Money is appointed to be paid. And further, the aforesaid Jurors do upon their Oath say, that there is a certain Custom and Usage of Merchants used, and from the Time whereof the Memory of Man is not to

The Custom of  
Merchants of  
Money payable  
at Usance on  
Bills of Ex-  
change.

## On Bills of Exchange.

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Foreign.

to the contrary, hath been used (and approved) That if any Factors or Party to whom any Bill of Exchange shall be directed, shall not accept the same Bill, or shall not pay the Sum of Money in the same contained (directed to be paid) according to the Tenor of the same Bill of Exchange; then he who subscribed or directed the same Bill of Exchange, ought to pay the first Sum so to him delivered or paid at any Time whatsoever, *after* the Time expired, by which the said Sum so paid and deliver'd, ought and was appointed by the said Bill of Exchange to have been paid, whensoever he that receiv'd such Sum shall be by the Deliverer thereof thereunto requir'd. And the Jurors aforesaid further say upon their Oath, That the within named T. W. to whom the within mentioned Bills of Exchange were directed, altho' the aforesaid Bills of Exchange were shewn and offer'd to him the said T. W. yet he accepted neither of the said Bills of Exchange, nor paid any of the Sums of *Flemish* Money, payable by the same Bills of Exchange. And the Jurors aforesaid further say upon their Oath, That the within named S. S. did *within* the Time in the said Bills specified, wherein the within mentioned Sums of *Flemish* Money was by the said Bills of Exchange to have been paid, require (request) the within named W. B. to repay unto the said S. the within specified Sum of 100 l. and that he the said W. hath not yet repaid the said 100 l. but whether upon the whole Matter aforesaid (found) in the Form aforesaid, it shall appear to the Court here, That the aforesaid W. did assume (take) upon himself (i. e. promise) in Manner and Form

F

as

*Foreign.*

*Damages,  
Charges, and  
Costs.*

as the within named *S. S.* hath within declared, or not, they the Jurors aforesaid are wholly ignorant; and thereof pray the Advice of the Court of the said Lord the now King here. And if upon that whole Matter so found in the Form aforesaid, it shall appear to the Court of the said Lord the now King here, That the aforesaid *W.* did assume (take) upon himself in Manner and Form within specified, Then the same Jurors do say upon their Oath, That the within named *W. B.* did assume (take) upon himself, in Manner and Form as the within named *S. S.* doth within complain against him, and they assess the Damages of him *S.* by Occasion of the not performing of the aforesaid Promise and Assumption, besides his Charges and Costs laid out by him about his Suit in this Particular, to 110 l. And for those Charges and Costs to 53 s. 4 d. And if upon the whole Matter aforesaid (found) in the Form aforesaid, it shall appear to the Court of the said Lord the now King here, That the aforesaid *W.* did not assume (take) upon himself in Manner and Form as is within contained, Then the said Jurors say upon their Oath, That the aforesaid *W. B.* did not assume (take) upon himself in Manner and Form (alledged against him) as he the said *W.* hath for himself by his Pleading within alleged. Therefore, &c.

*N. B.* The Cause of this Special Verdict seems to have been for that the Plaintiff in his Declaration hath not laid an Indebitatus, or a Mutuatus, as he well might have done. For which see the former Precedents.

DECLA-

# DECLARATIONS

*in Case on other written Contracts  
and Agreements.*

*A Declaration by the Bank of England as  
Assignees of a Promissory Note to pay  
500 l. to Sir J. H. on such a Day, for  
Value Received.*

London to wit. **T** P. late of London,  
Wine-Cooper, was attached to answer  
to the Governors and Company of the Bank  
of England, of a Plea of Trespass on the  
Case. And whereof they the said Governors  
and Company of the Bank of England by  
G. N. their Attorney complain, That, when  
(whereas) the foresaid T. after the first Day  
of May in the Year of the Lord 1705, to wit,  
on the 25th Day of October in the Year of  
the Lord 1717, at London aforesaid, in the  
Parish of the blessed Mary of the Arches, in  
the Ward of Cheap, made his certain Promis-  
sory Note in Writing, subscribed with his own  
Hand, bearing Date the same Day and Year  
last aforesaid, by which said Note he the  
said T. P. promised to pay to J. H. Baronet,  
or Order, into the Bank of England 524 l.

*In C. B.  
By the Bank  
as Assignees of  
a Promissory  
Note. See  
Lilly's Entr.  
p. 29.*

Bank. &amp;c.

14 s. 1 d. on the 25th Day of *January* then next following, for Value received, on the same 25th Day of *October*, in the Year of the Lord 1717, abovesaid. And also whereas the foresaid *J. H.* Baronet, afterwards, *to wit*, on the 31 Day of *December*, in the Year of the Lord 1717, aforeaid, at *London* aforeaid, in the Parish and Ward aforeaid, by an Indorsement upon the same Note, written with his own proper Hand, ordered and appointed the foresaid 524 l. 14 s. 1 d. (mentioned in the same Note) to be paid to the Governors and Company of the Bank of *England*, or to their Order, according to the Tenor of the same Promissory Note; by Reason of which said Premisses; and also by Force of the Statute in such Case lately made and provided, he the said *T.* became lyable to (chargeable with) and ought to be charged (lyable) to pay to the foresaid Governor and Company of the Bank of *England* the foresaid 524 l. 14 s. 1 d. in the said Promissory Note mentioned, according to the Tenor and Effect of the same Promissory Note, and of the Indorsement aforeaid. And he the said *T. P.* being so chargeable, in Consideration thereof, did afterwards, *to wit*, on the same Day and Year abovesaid, at *London* aforeaid, in the Parish and Ward aforeaid, assume (take) upon himself, and to the same Governors and Company of the Bank of *England*, faithfully promise to pay to the foresaid Governors and Company of the Bank of *England* the same 524 l. 14 s. 1 d. in the foresaid Promissory Note mentioned, according to the Tenor and Effect of the same Promissory Note. And also whereas the foresaid *T. P.* afterwards, *to wit*,  
the

# On Written Promises.

69

the 25th Day of *January* in the Year above-  
said, at *London* aforesaid, in the Parish and  
Ward aforesaid, was indebted to the (said)  
Governors and Company of the Bank of *En-  
gland* in other 524 *l.* 14 *s.* 1 *d.* for (such) the  
like Sum of Money unto the foresaid T. and  
at his Special Instance and Request before  
that Time Lent and Accomodated by them  
the said Governors and Company of the Bank  
of *England*; and he the said T. being so in-  
debted, in Consideration thereof, did after-  
wards, *to wit*, the same Day and Year last a-  
bovesaid, at *London* aforesaid, in the Parish  
and Ward aforesaid, assume (take) upon him-  
self, and unto the same Governors and Com-  
pany of the Bank of *England*, then and there  
faithfully promised, That he the said T. would  
well and faithfully pay and content the said  
524 *l.* 14 *s.* 1 *d.* unto the foresaid Governors  
and Company of the Bank of *England*, when  
he should be afterwards thereto required. Yet  
the foresaid T. P. &c. (as usual,) vide p. 61, 62, &c.

Bank, &c.

A Mutuatus  
for Money lent  
by the Bank  
to the Defen-  
dant.

*A Declaration in Case on a Special Contract  
to deliver 500 *l.* 3 *d.* Subscription to the  
South-Sea-Company, where Part of the  
Contract-Money was paid afterwards.*

*London to wit.* J. B. late of *London*, Mer-  
chant, and E. B. late of  
the same, Merchant, were attached to answer  
to R. D. of a Plea of Trespass on the Case,  
and whereof the same R. by A. B. his At-  
torney Complains, That whereas he the fore-  
said R. on the 4th Day of May, at *London*  
F<sub>3</sub> aforesaid,

In C. B.  
Case for not  
delivering  
South-Sea  
Subscriptions  
according to  
Agreement.  
Lilly's Ent.  
35.

*South Sea.*

aforesaid, in the Parish of *St. Peter's the Poor*, in the Ward of *Broad-street, London*, had paid 500 l. by him before that Time subscribed, on the Third Subscription of the Governor and Company of the Merchants of *Great Britain* trading to the *South-Sea*, and other Parts of *America*, and for promoting the Fishery, &c. And also whereas, afterwards, to wit, the same Day and Year, at *London* aforesaid, in the Parish and Ward aforesaid, It was agreed between the foresaid *J.* and *E.* and the said *R.* That the said *R.* upon Payment of 1550 l. with Interest, after the Rate of 5 l. for every 100 l. yearly for the same, from the Day of that Agreement, would deliver to the said *J.* and *E.* the said 500 l. Third Subscription of the Governor and Company aforesaid, and that the said *J.* and *E.* would pay on the foresaid *R.*'s Delivery of the said 500 l. Third Subscription that said Sum of 1500, of lawful Money of *Great Britain* to the same *R.* with Interest for the same, after the Rate of 5 l. in the Hundred, yearly, from the Day of the Agreement abovesaid, and that the foresaid *J.* and *E.* should allow and pay all future *Calls* (in) upon the foresaid 500 l. Subscription: And thereupon the same *J.* and *E.* afterwards, to wit, on the said 5th Day of *July*, in the Year aforesaid, at *London* aforesaid, in the Parish and Ward aforesaid, in Consideration that the said *R.* had then and there at the Special Instance and Request of them *J.* and *E.* assumed (taken) upon himself, and unto them *J.* and *E.* then and there faithfully promised to perform all and singular the Matters and Things in the Agreement contained on the Part of him *R.* to be performed,

# On Written promises.

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performed, they the said J. and E. did as-  
 sume (take) upon themselves, and unto the  
 same R. then and there faithfully promised,  
 that they the same J. and E. would well and  
 faithfully perform the said Agreement in all  
 Things on their Parts to be perform'd, and  
 the same R. in East saith, That afterwards, *to wit*,  
 on the 10th Day of April in the Year of the  
 Lord 1721, at London aforesaid, in the Parish  
 and Ward aforesaid, he the said R. delivered  
 to the said J. and E. the aforesaid 500 l. Third  
 Subscription aforesaid; yet they the foresaid J.  
 and E. not regarding their Promises and Assump-  
 tions aforesaid, but contriving and fraudulent-  
 ly intending craftily and subtilly to deceive  
 and defraud the same R. in this particular,  
 they have not paid, or caused to be paid, nor  
 hath either of them paid, or caus'd to be paid  
 the foresaid Sum of 1500 l. with such Interest  
 for the same as aforesaid, nor any Penny  
 thereof, according to the Form and Effect of  
 the Agreement aforesaid; altho' they the said  
 J. and E. afterwards, *to wit*, on the same  
 Day and Year, at London aforesaid, in the  
 Parish, &c. and oftentimes afterwards, were  
 requested by him R. to do the same, but they  
 the said J. and E. and each of them have re-  
 fused, and still do refuse to pay, or cause the  
 same to be paid to him. *And also whereas*  
*afterwards, to wit, on the 5th Day of July*  
*in the Year last above said, at London afore-*  
*said, in the Parish and Ward aforesaid, he the*  
*foresaid R. had at the like Instance and Re-*  
*quest of them the said J. and E. bargain'd and*  
*sold unto the foresaid J. and E. another 500 l.*  
*Third Subscription of the foresaid Company*  
*for 1500 l. of like lawful Money, with In-*  
*terest*

*Breach of the Agreement.*

*Laid another Way.*

*South Sea.*

terest for the same from the Day of that Bargain and Sale, payable after the Rate of 5 *l.* by the Hundred yearly, in Consideration thereof, and in Consideration that the said *R.* had assumed (taken) upon him, and unto the same *J.* and *E.* faithfully promised to deliver to the said *J.* and *E.* the foresaid Third Subscription of the foresaid Company, they the said *J.* and *E.* afterwards, *to wit*, on the same Day and Year last aforesaid, at *London* aforesaid, in the Parish, &c. did assume (take) upon themselves, and unto the same *R.* then and there faithfully promised, That they the said *J.* and *E.* would pay unto the said *R.* the foresaid other Sum of 1500 *l.* with Interest for the same, from the said Day of that Bargain and Sale upon the foresaid *R.*'s Delivering unto them the said other 500 *l.* Third Subscription of the said Company. And the same *R.* in Fact saith, That afterwards, *to wit*, on the 26th Day of *May*, in the Year of the Lord 1721, aforesaid, at *London* aforesaid, in the Parish, &c. he the said *R.* did Deliver unto the said *J.* and *E.* the said last mentioned 500 *l.* third Subscription of the said Company; yet the foresaid *J.* and *E.* or either of them have not paid, or caused to be paid the foresaid Sum of 1500 *l.* with such Interest for the same as aforesaid, nor any Penny thereof, altho' they the said *J.* and *E.* (*were afterwards, &c. requested as above.*) And also whereas the foresaid *J.* and *E.* afterwards, *to wit*, the 5th Day of *July*, in the Year of the Lord 1720, at *London*, &c. aforesaid, in Consideration, That the foresaid *R.* had at their like Special Instance and Request sold to them *J.* and *E.* another 500 *l.* Third Subscription of the

*Averment.*

*Breach.*

*Laid another way.*

the said Company, and in Consideration, *South Sea.*  
 That the foresaid R. had assumed (taken) upon him, and unto the same J. and E. faithfully promised to deliver unto them the said J. and E. another 500 l. Third Subscription of the said Company, subscribed by him R. and in Consideration that the said R. had assumed (taken) upon them, and unto the same J. and E. faithfully promised to deliver unto the said J. and E. the foresaid last mentioned 500 l. Subscription, they the said J. and E. did assume (take) upon themselves, and unto the same R. then and there faithfully promised, That they the said J. and E. would well and faithfully pay and content unto the said R. another Sum of 1500 l. of like lawful Money with Interest for the same, from the Day of that Sale upon the said R's delivering of the said 500 l. Subscription last mentioned; and the said R. in Fact, saith, That at a *Averment.*  
 General Court of the said Company, held on the 18th Day of May, in the 7th Year of the Reign of the Lord the now King, it was ordered, That the Stock of the said Governor and Company should immediately be given for Payment, upon the Third Subscription aforesaid, after the Rate of 400 l. for every 100 l. thereof, with the Dividend at the Feast of the Nativity of St. John the Baptist, otherwise called the *Midsummer* Dividend, and that the said Dividend should be 10 l. for every 100 l. thereof in the Stock of the same Company, whereof they the said J. and E. afterwards, *to wit,* the same Day and Year, at London, &c. in the Parish and Ward aforesaid, had Notice, and the foresaid R. doth further in Fact, say, That afterwards, *to wit,* *Further, A.*  
 the *verment.*

*South Sea.* the 27th Day of *A.* in the said 7th Year of the Reign of the said Lord the now King, at *London* aforesaid, in the Parish and Ward aforesaid, at the House of the Governor and Company aforesaid, called the *South-Sea* House (being in the said Parish and Ward) from the Hour of Ten till the Hour of Twelve of the same (they the said *J.* and *E.* having Notice thereof, before then given to them by the said *R.* that they should (might) be ready at the Place and Time aforesaid, to claim and receive the Stock for the said last mentioned 500*l.* Third Subscription of the said Governor and Company to be allowed) and the said *R.* continually remained there, and by the whole Time aforesaid was there ready, and offered to deliver unto the said *J.* and *E.* the foresaid 500*l.* Third Subscription so subscribed by him *R.* and to transfer to the said *J.* and *E.* all such Stock, and other Benefit as was or should be given or allowed for the foresaid last mentioned 500*l.* subscribed by him *R.* into the Third Subscription aforesaid, and they the foresaid *J.* and *E.* then and there might have claimed, and have had the foresaid 500*l.* Subscription last mentioned: Yet they the said *J.* and *E.* or either of them, or any other Person for them, or either of them, did not then and there come (appear) to accept (receive) or claim the foresaid last mentioned 500*l.* Third Subscription aforesaid, or to accept the Stock, or other Benefit, which by the Governor and Company aforesaid, was or might be given or allowed for the said 500*l.* in Money paid by the foresaid *R.* into the foresaid Third Subscription; but they the foresaid *J.* and *E.* and each of

'Tis not shewn  
when the No-  
tice was gi-  
ven.

Breach.

of them have altogether (or did wholly then and there) refuse to accept the said, the foreſaid laſt mentioned 500*l*. Third Subſcription aforeſaid, or ſuch Stock and other Benefit as ſhould (or might) be given or allowed for the ſame by the Governors and Company aforeſaid. Yet the foreſaid J. and E. or either of them, at that Time, or at any other Time hitherto have (or hath) not paid or cauſed to be paid the foreſaid 1500*l*. laſt mentioned, or any Penny thereof, altho' they the ſaid J. and E. were by him R. afterwards, to wit, the ſame Day and Year, at London, &c. and oftentimes afterwards required (requeſted) to do it, but they the ſaid J. and E. have hitherto altogether denied, and ſtill do deny to pay or cauſe the ſame to be paid, or cauſe to be paid to him the ſaid R. to the Damage of him R. 1600*l*. and thereof, &c.

*A Declaration in Affumpſit by an Executrix, for not transferring South-Sea Stock, according to a Contract with the Teſtator.*

London to wit. **A.** M. late of London, Knt. was attached to answer to M. J. Widow, Executrix of the Teſtament and Laſt Will of N. J. her late Husband deceased, of a Plea of Treſpaſs on the Caſe. And whereof ſhe the ſame M. by E. C. complains, That whereas the aforeſaid M. on ſuch a Day and Year, &c. at London, to wit, &c. in Conſideration that the aforeſaid N. had in his Life-time then and there, at the ſpecial Inſtance and Requeſt of the ſaid A. paid

In C. B. For  
not deliver-  
ing South-  
Sea Stock.  
See Lilly's 42

*South Sea.* paid to the said *A.* to the Use of the said *N.* the Sum of 118 *l.* 11 *s.* 5 *d.* of lawful Money of this Kingdom, did take upon himself, and unto the said *N.* in his Life-time faithfully promised, That he the said *A.* would transfer to the said *N.* 118 *l.* 11 *s.* 5 *d.* of the Capital Stock, in the Company trading to the *South-Seas* in *America*, commonly called the *South-Sea-Company*, with all the Dividends for the same, when he the said *A.* should be afterwards thereunto required. Yet he the aforesaid *A.* not regarding his said Promise and Assumption (Undertaking) so made in the Form aforesaid, but contriving and fraudulently intending the said *N.* in his Life-time, and the said *M.* since his Death, to deceive and defraud in that Particular, hath not transferred to the said *N.* in his Life-time, nor to the said *M.* since his Death, the aforesaid 118 *l.* 11 *s.* 5 *d.* of the aforesaid Capital Stock in the Company aforesaid, nor any Part thereof, altho' the said *A.* was requested to transfer the same Stock to the said *N.* by the said *N.* in his Life-time, *to wit*, the Day and Year aforesaid, at *London* aforesaid, *to wit*, in the Parish and Ward aforesaid. And altho' he the said *A.* since the Death of the said *N.* *to wit*, on the first Day of *January*, in the Year of the Lord 1718, at *London* aforesaid, in the Parish and Ward aforesaid, hath been requested by the said *M.* to transfer the said Stock to her the said *M.* (and the said *M.* in Fact saith, That she was then and there ready to have received the said Stock) But he the said *A.* refused to transfer the said Stock to the said *N.* in the Life-time of the said *N.* and since his Death hath altogether

Note, this  
Averment  
seems needless.

gether (wholly) refused, and still doth refuse to transfer the same to the said M. And whereas, &c. (i. e. other counts by Way of *Infinul Computasset Mutuatis*, &c.) see *infra*.

Assurance.

*A Declaration in Case upon a Policy of Assurance.*

London to wit. J. N. complains against R. A. for that to wit, That whereas the same J. on the first Day of January, in such a Year, &c. at London, to wit (in such a Parish and Ward) had appointed (order'd) That divers Wines, Sugars, and other Merchandizes, should be provided and bought for the said J. and for the Use of the said J. at the Island of T. in the Parts beyond the Sea, or at some other of the *Fortunate Islands* call'd the *Canary Islands*, in the said Parts beyond the Sea, by the Factor of the said J. N. there residing, as to such Factor of the said J. should seem best, to be transported from the same Island of T. or from some other Island of the said *Fortunate Islands*, unto (the Port of) London aforesaid, in a certain Ship called *The Fortune of London*, to the Use of the said J. And also whereas he the same J. had greatly desired to have all such Wines, Sugars, and Merchandizes of him J. or such Parts thereof which were then provided, or should be from thenceforth afterwards provided and bought by the said Factor of the said J. at the said Island of T. or any of the said *Fortunate Islands*, for the said J. and to his Use, and which then and there were loaded, or should from thenceforth afterwards

In B. R.  
Upon a Policy of Assurance. See Bro. Vade Mecum, 69.

**Assurance.** wards be loaded, in the said Ship, to be transported from the said Island of T. or any Island of the said *Fortunate Islands*, for or towards *London* aforesaid, and there to be unloaded. That the said J. should be thereof secured and assured, according to the Usage (Custom) of Merchants. And thereupon he the said J. N. on the first Day of *March*, in the Year, &c. aforesaid, at *London* aforesaid, to wit, in the Parish, &c. aforesaid, had a *Colloquium* (Discourse) with divers Persons for and concerning the said Assurance, and then and there procured A. B. and C. D. being Officers of the Lord the now King, in that Behalf, to make a certain Writing call'd a Policy of Assurance, used among Merchants, to be subscribed by such Person or Persons as would assure any Merchandizes so laden, or to be laden, as aforesaid, which said Writing of Assurance follows in these Words; In the Name of God, *Amen*. Be it known unto all Men by these Presents, That J. N. of *London*, Merchant, doth make Assurance, and causeth himself to be assured from the Island of *Teneriff*, or any of the Isles of the *Canaries*, upon Wines, Sugars, and other Merchandizes, laden or to be laden in the good Ship call'd, *The Fortune of London*, of the Burthen of 400 Tuns, or thereabouts, whereof is Master under God in this present Voyage J. W. or whosoever else shall go for Master in the said Ship, or by whatsoever other Name or Names the same Ship, or the Master thereof, is or shall be called, beginning the Adventure from the Day and Hour of the Lading of the said Wines, Sugars, or other Merchandizes, aboard

*Freighted.*

*Form of the Policy.*  
See hereafter  
Covenant on  
a Charter-  
Party.

board the same, at the said Island of Teneriff, or any other of the Isles of the Canaries aforesaid, and so shall continue and endure until such Time as the said Ship, with the same Wines, Sugars, and other Merchandizes, shall be arrived at London, and the same there discharged and laid on Land in good Safety. Touching the Adventures and Perils which we the Assurers hereafter nam'd are contented to bear, and do faithfully promise to take upon us in this present Voyage, they are of the Seas, Men of War, Fire, Enemies, Pirates, Rovers, Thieves, Jettizons, Letters of Mart or Counter Mart, Arrests, Restraints, and Detainments of Kings and Princes, and of all other Persons, Barratry of the Master and Mariners, and of all other Perils, Losses and Misfortunes, whatsoever they be, or howsoever the same shall chance, happen, or come to the Hurt, Detriment, or Damage of the said Wines, Sugars, &c. or any Part or Parcel thereof. And that in Case of any Misfortune it shall and may be lawful to the Assured, his Servant, Factor, and Assignee, to sue, labour, and travel for in and about the Defence, Safeguard, and Recovery of the said Wines, Sugars, &c. or of any Part or Parcel thereof, without any Prejudice to this Assurance. To the Charges whereof we the Assurers shall contribute, each one according to the Rate and Quantity of his Sum herein assured. And it is to be understood, That this present Writing and Assurance being register'd according to the King's Majesty's Order and Appointment, shall be of as much Force, Strength, and Effect, as the best and surest Policy or Writing of Assurance which hath

## Declarations, &amp;c.

*Assurance.* hath been heretofore used, to be made in *Lombard-Street*, or is now made within the *Royal-Exchange* in *London*. And so we the Assurers are contented, and do promise and bind ourselves, and every of us our Heirs, Executors and Goods, by these Presents unto the Assured, his Administrators, and Assignes, (*no Sum mentioned*) for the true Performance of the Premisses, submitting ourselves to the Order, Determination, and Judgment of such Merchants as now be, or hereafter shall be sworn and authorized by the Lord Mayor of the City of *London*, for the Time being, for the deciding and ending of Causes of Assurance, confessing ourselves fully satisfied, contented, and paid, of and for the Consideration due to us for this Assurance by these Presents, at the Hands of the said *J. N.* after the Rate of 6 *l.* in the Hundred. And in Testimony of the Truth, we the said Assurers have hereunto severally subscribed our Names and Sums of Money assured. Given at the Office of Assurance within the *Royal-Exchange*, *London* (*such a Day and Year*) made, register'd, and examined, according to his Majesty's Order and Appointment, the ——— Day of *M. Anno*, &c.

And he the aforesaid *R. A.* having executed the said Policy of Assurance as aforesaid, did afterwards, to wit, on the said first Day of *March*, in the said ——— Year of the Reign of, &c. aforesaid, in Consideration that the said *J. N.* had assumed upon himself, and to the said *R. A.* then and there promised to pay unto the said *R. A.* when he should be thereunto required, after the Rate of 6 *l.* for every 100 *l.* Assurance (according to the Usage

Usage of Merchants) of any Wines, Sugars, Assurance.  
 and other Merchandizes, of him the said J. N. of any Kind or Nature whatsoever, which then were, or should afterwards be laden at the said Island of T. or any other of the said *Fortunate Islands*, by the aforesaid Factor for the said J. N. and to his Use to be transported from thence towards *London* by Sea, as should amount to the said Sum of 25 l. did (take) assume upon himself, and unto the same J. N. did then and there, *to wit*, the Day and Year last aforesaid, at *London* aforesaid, &c. faithfully promise, That if the said Wines, Sugars, &c. then laden, or there afterwards to be laden by the said Factor, on the said Ship at the said Island of T. or at any other of the said *Fortunate Islands*, for *London* as aforesaid, or any Parcel thereof, should happen to be lost, taken, or destroy'd by the Seas, Men of War, Fire (&c. as in the Policy to) from the Day and Hour of the Lading of the said Wines, Sugars, &c. on board the said Ship, at the said Island of T. or any other of the said *Fortunate Islands*, before the said Ship with the said Wines, Sugars, &c. so laden, or to be laden thereon, should be arriv'd at *London* aforesaid, and before the same Wines, &c. were unladen (discharged) at *London* aforesaid, and put on Land in good Security, then he the said R. A. would well and faithfully pay and content to the said J. N. the Sum of 25 l. when he should be thereto required after such Loss, Taking, or Destruction. And that in Case of any Misfortune it shall and may be lawful, &c. (as the Policy *supra mutatis mutandis*, to the Words *Royal-Exchange, London.*) And for the further Ratification of  
 G the

**Assurance.** the said Assumption and Promise so made by the foresaid *R. A.* to the said *J. N.* in the Form aforesaid; he the said *R. A.* did on the same 1st Day of *March*, in the 6th Year of the Reign, &c. aforesaid, at *London*, &c. subscribe his Name and Consent to the foresaid Writing (Policy) of Assurance in these Words, *to wit*, *J. R. A.* am Content with this Assurance, which God preserve, for the Sum of 25 l. this first Day of *March*, Anno, &c. and on the same Day, and at the Place aforesaid, he the said *R. A.* acknowledged himself to be Satisfy'd of the Consideration aforesaid, so paid to him for his said Assumption and Assurance as aforesaid; And the foresaid *J. N.* in Fact saith, That the foresaid Writing (Policy) of Assurance was afterwards, *to wit*, on the 10th Day of *March* in the Year of, &c. aforesaid, at *London*, &c. made and Registred according to the Form of the Order and Appointment of his Majesty King, &c. by the said *A. B.* and *C. D.* being the then Officers appointed by his said Majesty in that Behalf; And the same *J. N.* in Fact further saith, That before the said Promises and Assumption so made by the said *R. A.* as aforesaid, and before the Day of the suing out this Bill, *to wit*, such a Day, &c. one *I. W.* was the Factor of him *J. N.* and then resided at the said Island of *Teneriff*, to provide and buy divers Merchandizes within the same Island for the foresaid *J. N.* and to his the said *J. N.*'s Use, and to lade in the said Ship the same Merchandizes to be transported by Sea from the same Island of *T.* to *London* aforesaid; And the same *J. N.* in Fact further saith, That the foresaid *J. W.* being then

First Aver-  
ment.

Second Aver-  
ment.

Third Aver-  
ment.

then the Factor of the said *J. N.* and then residing at the foresaid Island of *T.* in the Parts beyond Sea, did afterwards, *to wit*, on *such* a Day, in the Year aforesaid, provide and buy for the said *J. N.* and for the said *N's* Use at the same Island of *T.* 32 Pipes of *Canary* Wines, amounting in the whole to the Vale of 640 *l.* of lawful Money, &c. and on the Day and Year last mentioned, caused the said 32 Pipes of Wines to be laded at the said Island of *T.* in the Port of the same Island, in the said Ship, called, &c. to be transported in the same Ship from the said Island of *T.* by Sea to *London* aforesaid, to the Use of the said *J. N.* and that the said Ship did afterwards, *to wit*, on *such* a Day, &c. depart from the said Port of the said Island of *T.* laden with the said 32 Pipes of *Canary* Wines, of the said *J. N.* and was passing by, and upon the Seas in her Voyage towards *London* aforesaid so laden with the said Wines; And the said *J. N.* further in Fact <sup>4th Aver-</sup> saith, That after the said Lading of the said <sup>ment.</sup> 32 Pipes of *Canary* Wines of the said *J. N.* so made in the said Ship, in the Form aforesaid, to be transported from the said Island of *T.* to *London* aforesaid; and after the Departing of the said Ship from the said Port of the said Island of *T.* in her said Voyage towards *London* aforesaid, the said Ship being so laden with the said 32 Pipes of the said *J. N's* *Canary* Wines as aforesaid, in her Sailing on the high Sea from the said Island of *T.* towards *London* aforesaid, *to wit*, (*such* a Day, &c.) was by the Force of high (violent) Winds and great Tempests drowned in the said high Sea, and was then and there cast away, and

Assurance.

*Fifth Aver-  
ment.*

the said 32 Pipes of *Canary Wines* of the said *J. N.* were then and there wholly lost, before they, or any or them were unladed, discharged at *London* aforesaid, or put on Land in good Security, and that the said *J. N.* afterwards, *to wit*, (*such a Day at such a Place*) gave Notice to the said *R. A.* of the said Loss: And further the said *J. N.* in Fact saith, That afterwards, *to wit*, (*such a Day, &c.*) (*H. P. Knt.* then Lord Mayor of the said City of *London*, appointed certain Persons *to wit*, (*seven named*) Merchants of the said City of *London*; and swore and authorized them, or any six, five or four of them, to decide and determine Causes of Assurances, according to the Usage of Merchants, used and approved within the same City; and that as well the said *J. N.* as the said *R. A.* afterwards, *to wit*, on, &c. at, &c. submitted themselves to stand to the Order, Determination, and Judgment of the foresaid (*seven named*) or to any six, five, or four of them; and that they the foresaid (*seven named*) Merchants as aforesaid, taking on themselves the Burthen of deciding, judging the said Cause of Assurance between the said *J.* and *R.* did on *such a Day* meet, and had Debate, &c. But neither the said (*seven named*) nor any six, five or four of them made any Order or Determination in or about the Premises therein, because neither the said seven, nor any six, five or four of them could agree concerning the same; yet the said *R. A.* not regarding his said Promise and Assumption, but contriving and fraudulently intending to deceive the Plaintiff of the said 25 *l.* &c. (*as usual*) Damages 60 *l.*

*Here*

*Here Note; Where the like written Agreement or Policy of Assurance is under Hand and Seal, and for Payment of a certain Sum in Cases of the like Loss, an Action of Debt lies. vide post.*

*Freight.*

*A Declaration in Assumpsit by the Master of a Vessel for his Freight.*

London to wit. **R.** R. late of London, Merchant, was attached to answer to S. P. of a Plea of Trespass on the Case: And whereof the same S. P. by T. W. his Attorney complains, That whereas the foresaid R. on the first Day of January in the second Year of our Lord George now King of Great Britain, at London aforesaid, in the Parish, &c. in Consideration that the said S. P. had, at the Special Instance and Request of him R. carried and transported for the same R. divers Goods, Wares and Merchandizes in a certain Ship or Vessel, called the *John and Catharine* from *Archangel*, in the Parts beyond the Sea to London aforesaid, he the foresaid R. R. did on the Day and Year aforesaid, at London aforesaid, in the Parish and Ward aforesaid, take upon himself, and unto the same S. P. then and there faithfully promised, That he the foresaid R. would well and faithfully pay and content unto the said S. P. all such Sum or Sums of Money as he the said S. P. should reasonably deserve for the same, when he the said R. R. should be thereto afterwards required; and the said S. P. in Fact saith, That he did reasonably deserve to have of the said R. R. for the same (Freight) the Sum of 250*l.* of lawful Money

*In C. B.  
By a Master  
of a Vessel for  
Freight.  
Lilly 54.*

*See hereafter.  
Tit. Cove-  
nants.*

*Averment.*

*Freight.*

of Great Britain, to wit, at London aforesaid, in the Parish and Ward aforesaid, whereof the foresaid R. R. had then and there Notice by (from) the said S. P. yet he the foresaid R. contriving and fraudulently intending to deceive and defraud the said S. P. in this particular, &c. (as usual.)

*See Lilly's Entr. Page 53. a Declaration in Assumpsit against the Master of a Vessel by an Executrix for Wages due to her Husband's Apprentice as Servant to the said Master during an East India Voyage.*

*A Declaration on an Assumpsit or Promise of a Reward published in the Gazette.*

In B R.  
On a Promise  
printed in the  
Gazette.  
See Meth.  
Nov. 6.

London to wit. **T.** B. complains of **J. L.** in Custody, &c. For that, to wit, That whereas divers Goods and Chattels, to the Value of 400 l. were *such a* Day and Year, feloniously taken and carried away by certain Malefactors, and unknown Persons, from the Mansion House of the foresaid **J.** Situate (in *such a Street, &c.*) within the said City of **L.** as he the same **J.** caused to be reported and published. He the same **J.** afterwards, on *such a* Day, Year, &c. at London aforesaid, to wit, in (*such a* Parish and Ward) in which said Parish and Ward the foresaid House is Situate: In Consideration that the foresaid **T. B.** or any other Person would give Notice or Discover to the said **J.** where the said Goods were, so that the same Goods, or any Part of the same were restored again, he the said **J.** did assume, and then and there faithfully promised,

sed, That he the said J. would well and faithfully pay and satisfy to the Person or Persons so discovering the said Goods the Sum of Twenty Guineas, or proportionable for any Part thereof: And the foresaid T. in Fact saith, That he the said T. upon Hope of the faithful Performance of the said Promise and Assumption so made by the said J. as aforesaid, did afterwards, on the Third Day of *October*, in the Year, &c. at *London* aforesaid, in the Parish and Ward and House of the said J. aforesaid, give Notice to the said J. of the greatest Part of the Goods, &c. so lost as aforesaid, *to wit*, of so much of them as came to the Value of 390 *l.* so that the same Goods, and of the said Value of 390 *l.* did afterwards, *to wit*, on *such* a Day, &c. by Reason of the said Notice, come to, and were restored again to the Hands and Possession of the said J. whereby the foresaid J. ought, according to his said Promise and Assumption to have paid to the same T. Nineteen Guineas and an Half in Gold, which then amounted in Value to the Sum of 20 *l.* 9 *s.* 6 *d.* being a proportionable Part of the Reward in Guineas so promised by the said J. to be by him paid on the Discovery and Restoring of the Goods, &c. so lost as aforesaid; but he the foresaid J. not regarding his said Promise and Assumption so made as aforesaid, but contriving and fraudulently intending to deceive and defraud the said T. in that particular, hath not paid the said Nineteen Guineas and an Half, nor any Part thereof to the said T. nor in any Manner contented him for the same, although he the said T. was afterwards, *to wit*, on *such* at Day, &c. and often afterwards, *to wit*, at

Printed.

Averment.

on Notes.

*London* aforesaid, in the Parish, &c. aforesaid, requested by the said *J.* to do it, but he the said *J.* hath hitherto wholly refused to pay, &c. (as usual.)

*A Declaration in Case upon a Note for Payment of Money with Interest to the Plaintiff or Order, with several Counts.*

In B. R.  
For Payment  
of Money, and  
Interest on a  
Note, &c.  
See Meth.  
Nov. 31.

*London* to wit. **H.** *H.* of, &c. complains of **H.** *G. S.* in Custody of the Marshal, &c. *That whereas* the foresaid *G.* on the 4th Day of *July*, in such a Year of the King, at *London* aforesaid, in the Parish of the Blessed *Mary of the Arches*, (*Bows*) in the Ward of *C.* had borrowed and received of the foresaid *H.* the Sum of 100 *l.* and afterwards, to wit, on the same Day and Year, at *London* aforesaid, in the Parish and Ward aforesaid, in Consideration thereof, had assumed (taken) on himself, and unto the same *H.* then and there faithfully promised to repay the same Sum to the same *H.* or Order upon Demand, together with the Interest for the same for so long Time as it should remain unpaid; and altho' he the said *H.* did afterwards make no Order for the Payment of the said Sum of 100 *l.* or the Interest thereof, or directed the same 100 *l.* or the Interest thereof, to be paid to any other Person (whatsoever) and also, altho' he the said *H.* after the said Promise and Assumption made as aforesaid, to wit, on the 4th Day of *August*, in such a Year of the Lord, at *London* aforesaid, in the Parish and Ward aforesaid, did demand of the foresaid *G.* the said Sum of 100 *l.* and

and the Interest thereof then due; and also, although the legal Interest for the said Sum for the Time the same Sum remained due and unpaid to the said *H.* did then amount to the Sum of 20 *l.* so that the same, together with the said 100 *l.* did amount to the Sum of 120 *l.* which were then due and payable by the said *G.* unto the said *H.* according to the Promise and Assumption so made by the said *G.* to the said *H.* as aforesaid; yet he the said *G.* not regarding his said Promise and Assumption so made to the said *H.* in the Form aforesaid; but contriving and fraudulently intending craftily and subtilly to deceive and defraud the same *H.* in this particular, hath not paid the said 120 *l.* or any Penny thereof to the said *H.* altho', as aforesaid, on the Day and Year last aforesaid, and oftentimes afterwards, at *London* aforesaid, in the Parish and Ward aforesaid, he the said *G.* was by the said *H.* requested to do it; but he the said *G.* did then refuse, and still doth wholly refuse to pay the same to the said *H.* And also whereas the foresaid *G.* on the said 4th Day of *July* in (such a Year) aforesaid, at *London* aforesaid, in the Parish and Ward aforesaid, had received and borrowed of the foresaid *H.* another Sum of 100 *l.* and afterwards, to wit, on the same Day and Year, in the Parish and Ward aforesaid, had in Consideration thereof taken upon himself, and unto the said *H.* then and there faithfully promised to pay the said other Sum of 100 *l.* to the said *H.* or his Order on Demand, together with Interest for the same for so long Time as it should remain unpaid; and although he the said *H.* made no Order afterwards, for or concerning

Second Count.

## Declarations, &amp;c.

on Notes.

3d Count.

4th Count  
an Indebita-  
tus.

ing the Payment of the said Sum of 100*l.* last mentioned, or any Interest for the same, to be made to any Person or Persons whatsoever; yet he the said *G.* contriving and fraudulently intending, &c. (*as before*) And also whereas, he the said *G.* on the said 4th Day of *July*, in the Year, &c. first abovesaid, at *London* abovesaid, in the Parish, &c. had received and borrowed of the foresaid *H.* another Sum of 100*l.* and afterwards, *to wit*, on the same Day and Year, at *London* abovesaid, in the Parish and Ward abovesaid, had in Consideration thereof take upon himself, and unto the same *H.* then and there faithfully promised to pay the same other Sum to the same *H.* or to his Order upon Demand; and altho' the same *H.* made no Order for, or concerning the Payment of the same Sum of 100*l.* last mentioned to be made to any Person or Persons whatsoever, yet he the said *G.* contriving and fraudulently intending, &c. (*as before*) And also whereas the foresaid *G.* afterwards, *to wit*, on the 1st Day of *December*, in the Year, &c. at *London* abovesaid, in the Parish, &c. was indebted to the same *H.* in another 100*l.* for other Moneys before that Time borrowed, and had and received by the foresaid *G.* of the said *H.* and being so indebted, he the foresaid *G.* afterwards, *to wit*, on the said 1st Day of *December* in the Year, &c. *to wit*, at *London* abovesaid, in the Parish and Ward abovesaid, in Consideration thereof, did assume, &c. *as in Declarations of Indebitatus, Assumpsits, of which hereafter.*

To

To conclude this Head of Declarations in on Notes.  
 Case, on Bills, Notes and Written Promises; I shall here add the Translation of a Record of a Declaration on Two Promissory Notes (wherein are Six Counts contained) Together with the Plea, Replication, Demurrer, Writ of Inquiry and Judgment therein; and which (if attended to) will give Light to the Forms of many of the subsequent Precedents.

Note the  
 Exactness of  
 the following  
 Precedent in  
 all its Parts.

Of Easter Term in the First Year of the  
 Reign of the Lord George the Second, now  
 King of Great Britain, &c. Roll the  
 Forty-first, Ventris.

London to wit. **I**T is to be remembred, That  
 erewhile, to wit, in the Term of Holy Trinity or (if you had rather in Trinity Term) last past, came before the Lord the King, at Westminster, H.W. by P.H. his Attorney, and produced in the Court of the said Lord the now King, then, there his certain Bill against T.C. in Custody of the Marshal of the Marshalsea of the said Lord the now King, then, there, of, (concerning) a Trespass on the Case; and there are Pledges of (for) the Prosecution, to wit, John Doe and Richard Roe; which said Bill follows in these Words, to wit, — London to wit. H.W. complains of T.C. in Custody of the Marshal of the Marshalsea of the Lord the now King, being before the King himself; For that, to wit, That whereas the foresaid T. after the first Day of May, in the Year of the Lord 1713, at London aforesaid, to wit, in the Parish

In B. R.  
 A Declaration on two Notes with several Counts, viz.

1st Count  
 on a Note for  
 84 l.

on Notes.

Averment.

Second Count  
Insimul.  
comput. for  
84 l.

Parish of the blessed *Mary of the Arches*, in the Ward of *Cheap*, made his certain Note in Writing, called a Promissory Note, subscribed with his proper Hand (and Name) bearing Date on the 25th Day of *February*, (in such a Year) and then and there delivered the same Note to him the said *H.* by which said Note he the said *T.* promised to pay to the said *H.* or Order, 84 l. at Five Months after the Date of that Note, for Value received; and the same *H.* in Fact saith, That he the same *H.* hath not at any Time hitherto ordered the said 84 l. contained in the same Note to any other Person whatsoever; by Reason of which said Premisses, and also by Force of a certain Statute in such Case thereof lately made and provided, he the said *T.* was, and became chargeable (liable) and is still chargeable, (liable) to pay unto the said *H.* the foresaid 84 l. in the same Note contained; and being so chargeable (liable) he the said *T.* in Consideration thereof, did afterwards, *to wit*, on the same Day and Year last abovesaid, at *London* abovesaid, in the Parish and Ward abovesaid, assume (take) upon himself, and to the said *H.* then and there faithfully promised to pay to the said *H.* the foresaid 84 l. according to the Tenor of the same Note. *And also whereas*, afterwards, *to wit*, on the same 25th Day of *February*, in the Year of the Lord, &c. last abovesaid, at *London* abovesaid, in the Parish and Ward abovesaid: They the said *H.* and *T.* had accounted together of, and concerning divers Sums of Money before that Time due and owing by the said *T.* to the foresaid *H.* and being then behind and unpaid, and upon the same Account

count he the said T. being then and there found in Arrearage towards the said H. in 84 *l.* of lawful Money of *Great Britain*, and being so found in Arrearage he the said T. afterwards, *to wit*, on the same Day and Year last abovesaid, at *London* abovesaid, in the Parish and Ward abovesaid, in Consideration thereof, did take upon himself, and unto the said H. then and there faithfully promised, That he the said T. would well and faithfully pay and content (satisfy) unto the said H. the foresaid 84 *l.* last mentioned, within Five Months then next following. *And also* whereas, afterwards, *to wit*, on the 26th Day of the same Month of *February*, in the Year of the Lord last abovesaid, at *London* abovesaid, in the Parish and Ward abovesaid, he the said T. made another Promissory Note subscribed with his proper Hand and Name, bearing Date the same Day and Year last abovesaid, and then and there delivered the same Note to the said H. by which said other Note he the said T. promised to pay to the said H. or Order Six Months after the Date of the said Note 55 *l.* and 16 *s.* for Value received; and the said H. in Fact saith, That he the said H. hath not at any Time hitherto ordered the foresaid 55 *l.* 16 *s.* in the said Note or Bill contained to be paid to any other Person or Persons whatsoever; by Reason of which said Premises, and also by Force of the said Statute in such Case lately made and provided, he the same T. was, and became chargeable (liable) and still is chargeable (liable) to pay to the said H. the said 55 *l.* 16 *s.* in the said last mentioned Note contained; and being so chargeable (liable) he the said T. in Consi-

on Notes.

Third Count  
on a Note for  
55 *l.* 16 *s.*

Averment.

on Notes.

4th Count  
Insimul.  
comp. for  
55 l. 16 s.

5th Count  
Indebitatus  
Assumpsit  
for 139 l. had  
and received.

6th Count  
on a Mutua-  
tus for 139 l.  
lent, &c.

deration thereof, did afterwards, *to wit*, on the same Day and Year last abovesaid, at London aforesaid, in the Parish and Ward aforesaid, assume (take) upon himself, and to the said *H.* then and there faithfully promised to pay to the said *H.* the said 55 l. 16 s. according to the Tenor of the same Note. *And also whereas* afterwards, *to wit*, on the same 26th Day of February, in the Year of the Lord last abovesaid, at London aforesaid, in the Parish and Ward aforesaid; they the foresaid *H.* and *T.* accounted together of and concerning divers other Sums of Money before that Time due, &c. for 55 l. 16 s. as in the former *insimul computasset* for the 84 l. *And also whereas*, afterwards, *to wit*, on such a Day and Year (generally the same with the last Count) at London aforesaid, in the Parish and Ward aforesaid, he the said *T.* was indebted to the same *H.* in 139 l. 16 s. of like lawful Money of Great Britain, for so much Money of the said *H.* before that Time had and received by the said *T.* to the Use of the said *H.* and being so indebted, he the said *T.* did afterwards, *to wit*, on the same Day and Year last abovesaid, at London aforesaid, in the Parish and Ward aforesaid, in Consideration thereof, assume (take) upon himself, and to the *H.* then and there faithfully promised, That he the said *T.* would well and faithfully pay and satisfy the said 139 l. 16 s. unto the same *H.* when he should be afterwards there-  
to required: *And also whereas* afterwards, *to wit*, the same Day and Year last abovesaid, at London aforesaid, in the Parish and Ward aforesaid, he the said *T.* was indebted unto the said *H.* in another Sum of 139 l.  
16 s.

16 s. of like lawful Money, for so much *on Notes.*  
 Money before that Time at the Request of  
 the said T. lent and accomodated by the said  
 H. unto the said T. and he the said T. being  
 so indebted, did in Consideration thereof, af-  
 terwards, *to wit*, on the same Day and Year  
 last abovesaid, at London aforesaid, in the  
 Parish and Ward aforesaid, assume (take) up-  
 on himself, and unto the said H. &c. pro-  
 mised, That he would well and faithfully pay  
 and satisfy the said 139 l. 16 s. unto the same  
 H. when he the said T. should be thereto af-  
 terwards required; yet he the foresaid T. not  
 regarding his said several Promises and As-  
 sumptions so made as aforesaid, but contri-  
 ving and fraudulently intending craftily and  
 subtilty to deceive and defraud the said H.  
 in this particular, hath not yet paid to the  
 said H. the said several Sums of Money, or  
 any Penny thereof, nor hitherto in any Man-  
 ner satisfied him for the same, altho' he the  
 said T. was afterwards, *to wit*, on the 2d Day  
 of December, in the Year abovesaid, and of-  
 ten afterwards, *to wit*, at London aforesaid, in  
 the Parish and Ward aforesaid, requested by  
 the said H. to do it, whereof (or from whence)  
 he the said H. saith, That he is the worse,  
 and hath Damage to the Value of 200 l. and  
 thereof he brings his Suit.

*Breach of the  
 Promises.*

And now at this Day, *to wit*, on *Wednes-* The Plea.  
*day* next after Fifteen Days of *Easter* in *Other Things*  
 this same Term (until which Day the fore- *given, and ac-*  
 said T. had Licence of imparling to the fore- *cepted in Sa-*  
 said Bill and then to answer thereto) came be- *tisfaction.*  
 fore the Lord the now King, at *Westminster*,  
 as well the foresaid H. by his Attorney a-  
 foresaid,

*on Dates.*

*Note and Q.  
if these Words  
are of Use.*

foresaid, as the foresaid *T.* by *W. G.* his Attorney, and the same *T.* now defends the Force and Injury alledged, (*when, where and in what Manner the said Court of the said Lord the now King, before the King himself now here shall think fit*) And saith, That the foresaid *H.* ought not to have or maintain his Action thereof against him, because he saith, That well and true it is, That he did assume (take) upon himself in Manner and Form as the said *H.* hath above by his Declaration supposed (alledged) against him. But he the said *T.* further saith, That after the making of the several Promises and Assumptions aforesaid, above supposed (alledged) to be made, *to wit,* on the Third Day of *January*, in the Year of the Lord 1730, aforesaid, he the said *T.* at *London* aforesaid, *to wit,* in the Parish of, &c. gave and delivered to the said *H.* 5000*l.* Weight of Copper (*or so many Tons of Wares, &c.*) in full Satisfaction and Discharge of the several Promises and Assumptions aforesaid, and of all the Moneys mentioned in the same, which said 5000*l.* of Copper (*or, &c.*) he the said *H.* did then and there receive and accept from the said *T.* in full Satisfaction and Discharge of the several Promises and Assumptions aforesaid, and of all the Moneys therein mentioned; and this he is ready to aver, whereof the said *T.* prays Judgment, whether the said *H.* ought to have or maintain his Action thereof against him.

*The Replication.*

And the foresaid *H.* saith, That he for any Thing by the said *T.* above in Pleading, alledged ought not to be precluded (barred) from having his said Action against him (the said

## On Written Promises.

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said T.) because by protesting that the said T. did not deliver to the same H. the foresaid 5000 Pounds of Copper in full Satisfaction and Discharge of the several Promises and Assumptions aforesaid, and of all the Moneys mentioned in the same; For Plea the same H. saith, That he had not or received of the foresaid T. the foresaid 5000 Pounds of Copper in full Satisfaction and Discharge of the several Promises and Assumptions aforesaid, and of all the Moneys mentioned in the same in Manner and Form as the same T. hath in pleading above alledged, and he prays that this may be inquired by the Country.

*Notes, &c.*

*Protestando.*

And the foresaid T. saith, That the Plea aforesaid as it is in Manner and Form above, by Replying pleaded by the said H. and the Matter therein contained are not sufficient in Law for him the said H. to have his said Action thereof, to be maintained against him the said T. To which (whereto) the said T. hath no Need, nor is he bound by the Law of the Land to answer in any Manner, wherefore for Default of a sufficient Replication in this Particular the same T. prays Judgment as before, and that the foresaid H. may be barr'd from having his Action thereof against him.

*Demurrer.*

And the foresaid H. saith, That the Plea aforesaid, by him the said H. in Manner and Form above, by Replying, pleaded, and the Matter therein contained are good and sufficient in Law, for him the said T. to have his said Action to be maintained thereof against him the said T. which said Plea, and the Matter therein contained he the said H. is ready to aver, and prove as the Court here shall Award: And because the foresaid T.

*Joinder in Demurrer.*

H

hath

*Potes. &c.*

*Day given  
for Judgment.*

*Continuance.*

*The Entry of  
the Judgment.*

hath not answered to that Plea, nor hitherto in any Manner denied the same; he the said *H.* doth Demand his Judgment and Damages, by occasion of the Premises to be adjudged to him; But because the Court of the said Lord the now King here, are not yet advised of giving their Judgment of and upon the Premises, a Day is given thereof (thereupon) to the Parties aforesaid (to be) before the Lord the now King, at *Westminster*, until (*such a Day next after such a Return*) for hearing of their Judgment of and upon the said Premises; and because the Court of the said Lord the now King here, are not yet advised of giving Judgment thereupon, a further Day is given thereof (thereupon) to the said Parties to be before the said Lord the now King, at *Westminster*, until (*such a Day next after a such Return*) for hearing their Judgment of and upon the Premises (*And in like Manner further Days are to be given for arguing the Demurrer, &c. till the Court give Judgment.*)

At which Day before the Lord the now King, at *Westminster*, came the Parties aforesaid, by their Attorneys aforesaid; whereupon the Record and Matters aforesaid, being seen, and by the Court of the said Lord the now King here, fully understood, and all and singular the Premises being examined, and mature Deliberation had thereupon; for that it seem'd to the Court of the said Lord the now King here, That the Plea aforesaid, pleaded by him the said *H.* above in his Replication in Manner and Form aforesaid, and the Matter in the same contained, are good and sufficient in Law for him the said *H.* to have and maintain his Action aforesaid, there-

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thereupon against him T. whereby (the Suit of) the same H. remains thereof (thereupon) against the foresaid T. wholly undefended; for which the same H. ought to recover his Damages by occasion of the Premises against the foresaid T. But because it is unknown to the Court of the said Lord the now King here, what Damages the said H. hath sustained by occasion of the Premises, Therefore it is commanded to the Sheriff of London, that by the Oath of — honest and lawful Men of this Bailiwick, he diligently inquire what Damages the said H. hath sustained, as well by Occasion of the Premises aforesaid, as for his Charges and Costs by him about his Suit in this particular, laid out (expended) and that the Inquisition (Inquest) which he shall take thereupon, he send to the Court of the said Lord the now King, at *Westminster* on *Tuesday* next after Three Weeks of Holy *Trinity*, under his Seal, and the Seals of those by whose Oath that Inquest shall be taken, together with the Writ of the said Lord the now King, to him thereof directed, the same Day is given to the H. (T.) there, or rather (to the Parties aforesaid.)

Notes, &c.

Writ of Inquiry.

Note; more then 12 may be on Writs of Inquiry.

At which Day before the said Lord the King now here, at *Westminster* came the foresaid H. by his Attorney aforesaid, and the foresaid Sheriff of London, to wit, G. H. Knt. and R. K. Knt. by Virtue of the Writ of the Lord the King, to him thereof, directed, returned a certain (Inquest) Inquisition taken before him at such a House, with such a Sign, &c. Situate in the Parish of St. Lawrence in in the Old Jewry, in the Ward of Cheap, in the same City of London, That the foresaid

Return of the Writ.

*By Parol.*

*Damages.*

*Costs and  
Judgment  
finally for the  
Plaintiff.*

*The Defendant  
in Mercy.*

*H.* hath sustained Damages by Occasion of the Premisses aforesaid, besides his Charges and Costs laid out (expended) about his Suit in this particular, to 147 l. 7 s. 6 d. and for those his Charges and Costs to 11. 7 s. 4 d. Therefore it is considered, That the foresaid *H.* shall recover against the foresaid *T.* his Damages aforesaid, assessed by the Jury aforesaid, in the Form aforesaid, and also 11 l. 6 s. 2 d. for his Costs and Charges of Increase by the Court of the said Lord the now King, judged unto the same *H.* by his own Assent. Which said Damages and Costs do in the whole amount to 160 l. and the foresaid *T.* is (put) in Mercy, (i. e. to be amerced, &c.)

*But Note ; Except it be in Cases of Necessity, especially where there is written Evidence to support them (as in the Case supra) I can't advise the multiplying of Counts in Declarations.*

### Of Declarations upon Parol Assumpsits, i. e. Verbal Promises.

*Declarations  
for Non-  
feasances, on  
Parol Con-  
tracts expres-  
sed.*

**H**itherto of Declarations in Assumpsits raised upon written or printed Promises. I shall now give some Precedents of the like upon verbal Promises, either expressed or implied, wherein are included all such Matters as fall under the Head of Non-feasances, viz. Parol Assumpsits, Indebitatus Assumpsits, Quantum Valerents, Quantum Meruits, Mutuatus, Insimuls computassents, &c. But Note ; divers of these particulars are often (by way of several Counts) included in the Declarations on Promissory Notes, Bills or written Agreements, as may be observed from the foregoing Precedents.

*A De-*

# On parol Promises.

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*Expressed.*

*A Declaration on a Parol Assumpsit for Wines sold, delivered, and with Notes touching Evidence, &c.*

*Middlesex to wit.* **M.** T. complains of **T. R.** in Custody of the Marshal of the *Marshalsea* of the Court of the Lord the now King, before the King himself now here; for that, *to wit*, That whereas the foresaid **T.** on the 30th Day of *September*, in *such* a Year of the Reign, &c. at *W.* in the said County of *M.* was indebted to the foresaid **M.** in 40 *l.* of lawful Money of this Kingdom, for certain Wines by him **M.** to the said **T.** and at his Special Instance and Request before then sold and delivered; and being so indebted, he the said **T.** in Consideration thereof, afterwards, *to wit*, the same Day, Year and Place abovesaid, assumed upon himself, and unto the same **M.** then and there faithfully promised, That he the said **T.** would well and faithfully pay and content (satisfy) the said 40 *l.* with the Interest thereof unto him the said **M.** when he the said **T.** should be thereto afterwards required, yet he the foresaid **T.** not regarding his said Promise and Assumption, but contriving and fraudulently intending craftily and subtilly to deceive and defraud him the said **M.** of the said 40 *l.* with the Interest thereof, hath not yet paid the said 40 *l.* with the Interest thereof, unto the said **M.** nor hitherto in any Manner satisfied him for the same, although he the said **T.** afterwards, *to wit*,

*In B. R.  
For Wines, &c.  
sold and delivered.*

*Lilly's Entr.  
14. See Pract.  
Reg. 109. 120.*

*Indeb. Assumpsit.  
Note; On this Count the Plaintiff must prove the express Price agreed on.*

**Expressed.**

Quantum  
valebant, &c.  
Note; On this  
Count the  
Delivery only  
need be pro-  
ved,

**Averment.**

Note; The  
Damages must  
be the same  
as in the Ace-  
tiam, or the  
Bail will be  
discharged.

on the first Day of *May* in the said Year of the now King, and often afterwards, at *W.* aforesaid, in the County aforesaid, was there- to required by the same *M.* but hath hitherto denied, and still doth deny (refuse) to pay that to him, or in any Manner to content (satisfy) him for the same. *And also whereas* he the foresaid *M.* afterwards, *to wit,* on the first Day *October*, in the Year of, &c. above- said, at *Westminster* aforesaid, in the County afore- said, had at the like Special Instance and Re- quest of him the said *T.* sold and delivered to the same *T.* other Wines, he the said *T.* in Consideration thereof, afterwards, *to wit,* the same Day, Year and Place last mentioned, assumed upon himself; and unto the said *M.* then and there faithfully promised, That he the same *T.* would well and faithfully pay and content unto the said *M.* such a Sum of Money for the said Wines last mentio- ned, as he the said *Martin* did reasonably deserve to have for the same, when he the said *T.* should be thereto required. And the said *M.* in Fact saith, That he reason- ably deserved to have of the said *T.* for the Wines last mentioned the Sum of 50*l.* of like lawful Money; and thereof he the said *T.* did afterwards give Notice to the said *T.* *to wit,* the Day, Year and Place last above- said; yet he the foresaid *T.* not re- garding his said Promise and Assumption last mentioned, but fraudulently intending, &c. hath not paid the said 50*l.* or any Penny there- of to the said *M.* altho' he hath been often thereto requested by the said *M.* *to wit,* &c. but he the said *T.* hath refused, and still doth, &c. To the Damage of him *M.* 50*l.* &c.

*A De-*

*A Declaration in Case for Non-Performance  
of a Parol Contract, for the Delivery of  
Hops (wherein are mutual Promises.)*

London to wit. **S.** A. late of C. in the County of E. Yeoman, was attached to answer to G. T. of a Plea of Trespass on the Case; and whereof the same G. by B. T. his Attorney complains, That whereas on the first Day of October, in the Year of the Lord 1700, at London aforesaid, to wit, in the Parish of the blessed Mary of the Arches, in the Ward of Cheap, a certain Discourse was had, and moved by and between the same G. and S. of and concerning the buying and selling of Hops; and upon that Discourse it was then and there agreed between them the said G. and S. That the said G. should sell to the same S. one Load (that is to say) twenty Hundred (Pounds) Weight of Hops, at the Rate of six Pounds in Money for every Hundred Weight of Hops; the said Hops to be of the next Michaelmas Growth of the said County of E. to wit, of the Year 1710, and to be deliver'd in London, on or before the Feast of Saint Michael, in the said Year 1710. (2.) In Consideration of which said Price and Agreement, he the said S. at the Day and Place first mentioned, paid (or deliver'd) into the Hands of the said G. one Shilling. And he the said S. at the same Day and Place first mentioned (in Consideration that the aforesaid G. had assumed (taken) upon himself, and to the same S. then and there faithfully promised, that he the same G.

In C. B.  
On an Agreement to deliver Hops.  
See Lilly's  
Entr. 19.

Mutual Promises.

Expressed.

would well and faithfully perform the said Agreement, in all Things on his Part to be perform'd, did assume (take) upon himself, and to the same *G.* then and there faithfully promised, That he the same *S.* would well and faithfully perform the same Agreement in all Things on his Part to be perform'd. And the same *G.* in Fact saith, That he the said *G.* afterwards, *to wit*, on the Day of *St. Michael the Archangel*, in the Year 1710 aforesaid, did bring out of the said County of *Essex*, twenty Hundred Weight of Hops, of the then next *Michaelmas* Growth, after the said Agreement of the said County of *E.* and did deliver those Hops upon the said Feast Day, at *London* aforesaid, *to wit*, in a Place there call'd *Leaden-Hall*, in the Parish and Ward aforesaid; and thereof he the same *G.* did on the same Day and Year, at the Parish and Ward aforesaid, give Notice to the said *S.* and the same *G.* then and there left the said twenty Hundred Weight of Hops in the said Place call'd *Leaden-Hall*; and the said twenty Hundred Weight of Hops have there continued from the, said Time hitherto, and during all that Time have been always ready to have been taken and carried away by the said *S.* at his Will and Pleasure. Yet he the aforesaid *S.* not regarding his Promise and Assumption aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the same *G.* in this Particular hath altogether refused to receive or or accept the said Hops, in any Manner to pay or satisfy the said *G.* for the same, according to his Agreement aforesaid, altho' he hath been by the said *G.* thereto requested,

## On Patol Promises.

105

Expressed.

*to wit*, on the Day and Year last above mentioned, at *London* aforesaid, in the Parish and Ward aforesaid; but he the said *S.* hath hitherto refused, and still doth refuse to receive or accept the said Hops, or in any Manner to pay or satisfy the said *S.* for the same, to the Damage of him *G.* 300 *l.* and thereupon he brings his Suit.

### *A Declaration for not performing a Special Agreement to deliver Barley, &c.*

*London to wit.* **D.** H. complains of *T. S.* *In B. R.*  
*On a Special*  
*Agreement to*  
*deliver Bar-*  
*ley, &c.*  
in Custody of the Marshal; for that *to wit*, That whereas on (*such a Day in such a Year of the now King*) at *London* aforesaid, *to wit*, in the Parish ——— a certain Discourse (Treaty) was had and moved between them the said *D.* and *T.* of and concerning Barley-Corn, and the Price it then bore. And upon that Discourse so had, as aforesaid, it was then and there agreed between them the said *D.* and *T.* for and concerning the Delivery of 800 Bushels of Barley by the said *D.* unto the aforesaid *T.* at the Price of three Shillings for each Bushel. He the said *D.* did then and there in Consideration of one Shilling to him then and there given, and deliver'd by the said *T.* assume and undertake, and to the said *T.* then and there faithfully promised, That he the said *T.* would on or before *such a Day*, in *such a Year of the now King*, at *such a Place*, deliver to the said *D.* 800 Bushels of Barley, &c. well cleansed and in good Condition, at the said Price of three Shillings for every Bushel

**Expressed.****Averments.**

Bushel of the said 800 Bushels of the said Barley, which should be so delivered as aforesaid. And the said D. in Fact saith, That on the Day and Year, and at the Place last before mentioned, he the said D. did deliver to him the said T. the said 800 Bushels of Barley, so well cleansed and in good Condition, as aforesaid, which he the said T. did then and there receive, and take into his Custody and Possession. And the said D. further in Fact saith, That the said 800 Bushels of Barley so deliver'd and receiv'd, as aforesaid, did at the said Price of three Shillings for each Bushel, amount in the whole to the Sum of 40 l. which said Sum of 40 l. by Occasion of the Premises, became due and payable by the said T. unto the same D. Which said Sum of 40 l. he the said T. did then and there assume and promise to pay the same unto the said D. when he should be afterwards thereunto required; yet he the said T. not regarding his Promise and Assumption aforesaid; but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said D. in that Particular, hath not paid the said 40 l. nor any Penny thereof to the said D. tho' thereto requested by the said D. *to wit, at such a Place, at such a Time (Et. as usual.)*

*Another*

*Another Declaration against two for not performing a Special Parol Agreement, wherein Special Damages are laid, for Breach of the Contract.*

*Middlesex to wit.* **A.** B. late of *W.* in the County of *M.* aforesaid, complains of *W. P.* and *F. B.* in Custody of the Marshal of the Marshalsea of the now Lord the King here; for that whereas they the said *W.* and *F.* such a Day and Year, at such a Place in the County aforesaid, had agreed with him the said *A.* to buy of him all such Hides and Skins, of all and singular the Oxen, Heifers, Cows, and Calves of him the said *A.* which he the said *A.* should from and after the aforesaid such a Day, until such a Day then next following, happen to kill and slay, they the said *W.* and *F.* in Consideration thereof, and of one Shilling to them in Hand paid by the said *A.* did assume, take upon themselves, and unto him the said *A. B.* then and there faithfully promised, That they the said *W.* and *F.* would, on the Day last mentioned, well and truly pay unto him the said *A.* for every such Hide and Skin, according to the Rates and Prices following (*to wit*) that is to say for every Hide or Skin of each such Ox or Heifer, so killed and slayed by him the said *A.* within the Time aforesaid; and within the same Time deliver'd to them the said *W.* and *F.* the Sum or Price of three Shillings and six Pence. And for every Hide or Skin of each such Cow so kill'd and slay'd by him the

*In B. R.  
The like with  
Special Damages laid (well drawn.)*

## Declarations, &amp;c.

**Expressed.**

the said *A.* within the Time aforesaid, and within the same Time deliver'd to them the said *W.* and *F.* the Sum or Price of two Shillings. And for every Dozen of Calve-Skins, the said Calves being so kill'd and slay'd, and their Skins deliver'd to the said *W.* and *F.* within the Time aforesaid, the Sum or Price of five Shillings. By Reason of which said Promise and Assumption of them the said *W.* and *F.* so made in the Form aforesaid; he the said *A.* did within the Time aforesaid kill and slay 408 Oxen and Heifers, 53 Cows, and 50 Dozen of Calves; and at divers Days and Times within the same Time deliver'd to them the said *W.* and *F.* all and singular the Hides and Skins of the said Oxen, Heifers, Cows, and Calves, so kill'd and slay'd, according to the Form of the Bargain and Agreement aforesaid, to wit, at *W.* aforesaid, in the said County of *M.* The true Value and Price of all which said Hides and Skins so deliver'd by the said *A.* to the said *W.* and *F.* do in the whole amount to the Sum of 58 *l.* 18 *s.* and he the said *A.* trusting and confiding in the Promises and Assumption of them the said *W.* and *F.* and that the said Sum of 58 *l.* 18 *s.* would have been paid to him by the said *W.* and *F.* according to the Bargain and Agreement aforesaid, had assumed upon himself, and faithfully promised to one *R. B.* and to divers other Persons to whom the said *A.* was then indebted in the like Sum of Money, to pay them their respective Debts. Yet they the aforesaid *W.* and *F.* being not ignorant of the Premisses, and well knowing the said *A.* to have promised the Payment of the said Sum of

of 58 l. 18 s. unto the aforesaid *R. B.* and such (those) other Persons to whom he stood indebted as aforesaid, and contriving and fraudulently intending, craftily and subtilly to deceive and defraud the said *A.* in that Particular, they the said *W.* and *F.* or either of them, have not hitherto paid the said Sum of 58 l. 18 s. or any Penny thereof, unto the said *A.* nor in any Manner (contented) satisfied him for the same, altho' he the said *A.* on *such* a Day, and at *such* a Place, and at divers other Times and Places, requested them, and each of them, to do it; but they the said *W.* and *F.* and each of them, have refused, and do still refuse to pay the said 58 l. 18 s. unto the said *A.* by Reason whereof he the said *A.* hath not been able to keep his said Promise and Day of Payment with the said *R. B.* and others to whom the said *A.* stood indebted as aforesaid. Infomuch that he the said *A.* by Reason thereof, is (and stands) very much hurt in his good Name, Credit, and Reputation; and also very much hurt and prejudiced in his Trade and Business, and Dealings with the same *R. B.* and other honest Tradesmen. And likewise put to great Trouble, Charges, and Expences in defending divers Actions and Suits commenced and prosecuted against the said *A.* for not performing of his Contracts, occasioned by the said *W.* and *F.* not performing their Bargain and Contract so made with the said *A.* as aforesaid; whereof he saith, that he is the worse, and hath Damage to 140 l. and thereof he brings his Suit.

A De-

*Implied.*

*A Declaration by an Executrix and her Husband in Assumpsit, for Goods sold and delivered by the Testator, on three Counts; with a Plea in Bar of four Horses, delivered and accepted in Satisfaction. Demurrer and Judgment for the Plaintiff.*

In C. B. Hill.  
2 Geo. I. Rot.

1179. on a  
Promise for  
Goods sold and  
delivered.

1st Count.  
Indeb. Assum.

**W**. N. late of H. in the County aforesaid, Yeoman, was attached to answer to *James L.* and *Jane* his Wife, Executrix of the Testament and last Will of *John L.* deceased, of a Plea of Trespass upon the Case; and whereof they the said *James* and *Jane*, by *J. R.* their Attorney, complain, That whereas the aforesaid *W.* on the first Day of *January*, in the Year of the Lord 1711, at *Burford* in the County aforesaid, was indebted to the aforesaid *John L.* in his Life-time in 58*l.* 5*s.* of lawful Money of *Great-Britain*, for 80 Sheep of the said *John* (in his Life-time) before, at the special Instance and Request of him *W.* before that Time sold and delivered by the said *John* in his Life-time, to the said *W.* And being so indebted he the said *W.* in Consideration thereof, did afterwards, to wit, on the same first Day of *January*, in the Year aforesaid, at *B.* aforesaid, take upon himself, and unto the said *John*, then and there faithfully promised, That he the same *W.* would well and faithfully pay and satisfy the 58*l.* 5*s.* unto the said *John*, when he should be thereunto afterwards required. And also whereas,

# On Parcel Promises.

III

whereas, afterwards, *to wit*, on the said first Day of *January*, in the Year aforesaid, at *B.* aforesaid, in Consideration that the aforesaid *John* had in his Life-time at *B.* aforesaid, at the special Instance and Request of him *W.* before that Time sold and deliver'd to the said *W.* other 80 Sheep of the said *John*. He the said *W.* did then and there assume (take) on himself, and to the said *John* in his Life-time, faithfully promised, That he the said *W.* would also well faithfully pay and satisfy to the said *John* so much (such a Sum of) Money, for the said 80 Sheep last mentioned, as the same 80 Sheep were reasonably worth at the Time of their said Sale and Delivery to the said *W.* when he the said *W.* should be afterwards thereunto required. And the said *James* and *Jane* in Fact say, That the 80 Sheep last mentioned were worth at *B.* &c. other 58 *l.* 5 *s.* of lawful Money of *Great-Britain*, whereof the aforesaid *John* in his Life-time then and there gave Notice to the said *W.* And also whereas the aforesaid *W.* afterwards, *to wit*, the same first Day of *January*, in the Year aforesaid, at *B.* aforesaid, had accounted together with the aforesaid *John* in his Life-time, of divers Sums of Money to the aforesaid *John* in his Life-time, before then due and unpaid by the said *W.* And upon that Account he the said *W.* was found in Arrearage towards the said *John* in his Life-time, in other 58 *l.* 5 *s.* of like lawful Money of *Great-Britain*. And being so found in Arrearage, he the said *W.* in Consideration thereof, afterwards, *to wit*, on the same first Day of *January*, in the Year above-said, at *B.* aforesaid, did assume (take) upon himself,

Implied.

2d Count.  
Quant. Valo-  
rent.

Averment.

3d Count.  
Insimul  
Computasset.

Implied.

himself, and to the aforesaid *John* in his Life-time, then and there faithfully promised, That he the said *W.* would well and faithfully pay and satisfy the said 58 l. 5 s. unto the said *John*, when he should be afterwards thereunto required. Yet he the aforesaid *W.* not regarding his said several Promises and Assumptions so made in Form as aforesaid; but contriving and fraudulently intending in this Particular, craftily and subtilly to deceive and defraud the said *John* in his Life-time, and the said *James* and *Jane* since the said *John's* Death; hath not paid the said several Sums, nor any Penny thereof, to the said *John* in his Life-time, nor to the said *John* or *Jane*, or either of them, since the said *John's* Death, (altho' he the said *W.* was afterwards, *to wit*, on the 20th Day of *January*, in the said Year of the Lord 1711, at *B.* aforesaid, by the said *John L.* in his Life, and by the said *James* and *Jane* since the said *John's* Death, *to wit*, on the first Day of *May* 1714, at *B.* aforesaid, and at divers other Times required to do it) hath not yet paid, or in any wise satisfied for the same; but hath altogether refused, and still doth refuse to pay that Money to them, or in any Manner to content them for the same, to the Damage of them the said *James* and *Jane* 60 l. and thereof they bring their Suit; and do bring here into Court the Letters Testamentary of the said *John L.* whereby it (plainly) appears to the Court here, the said *Jane* to be Executrix of the Testament aforesaid, and to have the Administration thereof.

Profect. &amp;c.

And

And the aforesaid *W.* by *J. M.* his Attorney, comes and defends the Force and Injury, when, where, and in what Manner the Court here shall think fit, and saith, That the aforesaid *J. L.* and *Jane*, ought not to have their Action aforesaid against him, because he saith, That after the making of the several Promises and Assumptions aforesaid, *to wit*, on the second Day of *January*, in the second Year of the said Lord the now King, at *B.* aforesaid, he the said *W.* did give and deliver to the said *John L.* in his Life, four Horses, in full Satisfaction and Discharge of the several Promises and Assumptions of the aforesaid *W.* which said Horses he the said *J. L.* did in his Life then and there receive and accept from the same *W.* in full Satisfaction and Discharge of the said several Promises and Assumptions of the aforesaid *W.* And this he the said *W.* is ready to aver, whereof he prays Judgment, if the aforesaid *J. L.* and *Jane* ought to have their Action thereof against him.

Expressed.

Plea in Bar.  
Delivery and  
Acceptance of  
four Horses.

And the aforesaid *James* and *Jane* say, That they for any thing (by the said *W.*) before alledg'd, ought not to be barred from having their said Action, because they say, That he the said *W.* did not give nor deliver to the same *John L.* in his Life, the four Horses aforesaid, in full Satisfaction and Discharge of the said several Promises and Assumptions of the aforesaid *W.* as the said *W.* hath in Pleading above alledged, and they pray that this may be inquired by the Country.

Replication.

**Expressed.***Demurrer  
and Judgment  
pro Quer.*

To this Replication the Defendant demurred,  
and the Plaintiff join'd as usual, vide ante.  
And in Easter Term following Judgment was for  
the Plaintiff.

*Another Declaration in Assumpsit for Wares  
and Merchandizes sold and delivered,  
(well-drawn.)*

In C. B. Trin.  
3 Geo. 1. Rot.

319. for  
Wares sold,  
&c.

1st Count.  
An Indebit.  
Assump.

2d Count.  
A Quantum  
valebant.

**R.** B. late of London, Broker, was attached to answer to *R. Froom*, of a Plea of Trespass on the Case; and whereof the same *R. F.* by *R. H.* his Attorney, complains, That whereas the aforesaid *R. B.* on the first Day of May, in the third Year of the Reign of the Lord George the now King of Great-Britain, at London aforesaid, to wit, in the Parish of the blessed Mary, &c. was indebted to the said *R. F.* in 600*l.* of lawful Money of Great-Britain, for divers Goods, Wares, and Merchandizes of the said *R. F.* by him *R. F.* to the same *R. B.* and at his special Instance and Request before that Time sold and delivered. And being so indebted, he the aforesaid *R. B.* did afterwards, in Consideration thereof, to wit, on the Day and Year aforesaid, at London aforesaid, in the Parish and Ward aforesaid, assume (take) upon himself, and to the same *R. F.* then and there faithfully promised, That he the said *R. B.* would well and faithfully pay and satisfy the aforesaid 600*l.* unto the said *R. F.* when he should be afterwards thereto required. And also whereas the aforesaid *R. B.* afterwards, to wit, on the Day and Year aforesaid,

# On parol promises.

115

Expresses.

said, at *London* aforesaid, in the Parish and Ward aforesaid, in Consideration that he the said *R. F.* had at the special Instance and Request of him *R. B.* sold and deliver'd to him *R. B.* divers other Goods, Wares, and Merchandizes, he the aforesaid *R. B.* on the Day and Year abovesaid, at *London* aforesaid, in the Parish and Ward aforesaid, assumed (took) upon himself, and unto the said *R. F.* did then and there faithfully promise, That he the said *R. B.* would well and faithfully pay (satisfy) to the same *R. F.* all such Sums of Money as those Goods, Wares, and Merchandizes were worth at the Time of their Sale and Delivery, when he the said *R. B.* should be afterwards thereunto required. And the aforesaid *R. F.* in Fact saith, That the Goods, Wares, and Merchandizes last mentioned so sold and delivered to the said *R. B.* were reasonably worth at the Time of their Sale other 600 *l.* of lawful Money of *Great-Britain*, whereof the aforesaid *R. B.* at *London* aforesaid, in the Parish and Ward aforesaid had Notice. And also whereas the aforesaid *R. B.* afterwards, *to wit*, on the same Day and Year abovesaid, at *London* aforesaid, in the Parish and Ward aforesaid, was indebted to the said *R. F.* in 200 *l.* of like lawful Money of *Great-Britain*, for so much Money before that Time lent and accommodated by the said *R. F.* to the said *R. B.* And being so indebted he the aforesaid *R. B.* in Consideration thereof, did afterwards, *to wit*, on the Day and Year abovesaid, at *London* aforesaid, in the Parish and Ward aforesaid, assume (take) upon himself, and unto the said *R. F.* then and there faithfully promised, That he the aforesaid *R. B.*

Averment.

3d Count on  
a Mutuatus  
for Money  
lent.

*Expressed.* would well and faithfully pay and satisfy the said 200 l. last mentioned unto the said R. F. when he the said R. B. should be thereunto required. Yet the aforesaid R. B. not regarding his several Promises and Assumptions so made to the said R. F. in the Form aforesaid; but contriving and fraudulently intending, craftily and subtilly to deceive and defraud the said R. F. &c. as before, *Mutat. Mutand.*

*To the above Declaration the Defendant demurred thus.*

*Demurrer to the Declaration.*

And the aforesaid R. B. by Charles Bernard his Attorney, comes and defends the Force and Injury, when, where, and in what Manner the Court here shall think fit, and saith, That the Declaration aforesaid, and the Matter in the same contained, are not sufficient in Law for the said R. F. to maintain the having of his said Action against him the said R. B. and that he hath no Need, nor is by the Law of the Land bound to answer to that Declaration, made and declared in the Manner and Form aforesaid; and this he is ready to aver; whereof (wherefore) for default of a sufficient Declaration of the said R. F. in this Particular, he the said R. B. prays Judgment; and that the said R. F. may be barred from having his said Action against him.

*Note, The Plaintiff joined in this Demurrer, and on Wednesday, July the third, 1717, after divers Objections made, the above Declaration was held good in omnibus.*

*A De-*

*A Declaration on an Indebitatus Assumpsit, &c. for 300 Peices of Foreign Coin had and received (wherein are 10 Counts.)*

London to wit. **W**. C. late of the City of *In C. B. Hill.*  
*1st Geo. 1.* Canterbury, in the Coun-  
of Kent, Esq; was attached to answer to *J. D.*  
of a Plea of Trespas on the Case, and where-  
of the same *J.* by *R. H.* his Attorney, com-  
plaints, That whereas the foresaid *W.* on the  
1st Day of *August*, in the Year of the Lord  
1715; at *London* aforesaid, to wit, in the Pa-  
rish of the blessed *Mary, &c.* was indebted to  
the said *J.* in 300 Pieces of coined Gold,  
called *French Lewidores*, and *Spanish Pistols*,  
being Foreign Money of the Value of 300*l.*  
lawful Money of *Great Britain*; for so much  
Money before then had and received by the  
said *W.* of the said *J.* for the same *J.* and to  
his Use, and the same *W.* being so indebted,  
did in Consideration thereof, afterwards, to  
wit, on the Day and Year aforesaid, at *London*  
aforesaid, in the Parish and Ward aforesaid,  
take upon himself, and unto the same *J.* then  
and there faithfully promised, That he the  
foresaid *W.* would well and faithfully pay  
and satisfy the foresaid 300 Pieces of coined  
Gold, when he should afterwards be thereto  
requir'd. And also whereas the foresaid *W.*  
afterwards, to wit, on the Day and Year a-  
bovesaid, at *London* aforesaid, in the Parish  
and Ward aforesaid, was indebted to the said  
*J.* in other 300 Pieces of coined Gold, call'd  
*French Lewidores* and *Spanish Pistoles*, Foreign  
Money of the Value of 300*l.* of the like  
Money

*Indebitus  
Assumpsit,  
&c. for Pieces  
of Gold, &c.  
with 10  
Counts.*

*1st Count In-  
debitat. Af-  
sump. for the  
300 Pieces.*

*2d Count. The  
same on a  
Mutuatus.*

**Implied.**

3d Count.  
Money had and  
receiv'd.

4th Count. A  
Mutuatus.

5 Count. In-  
debitat. As-  
fump. for  
300 Ducket-  
toons.

6 Count. A  
Mutuatus  
for the same.

Money of *Great Britain*, for so much Money before then lent and accomodated by the said *J.* to the same *W.* and being so indebted, he the foresaid *W.* did in Consideration thereof, afterwards, &c. (*as in the former Count to*) requir'd. And also whereas he the foresaid *W.* afterwards, to wit, on the Day and Year abovesaid, at *London*, &c. was indebted to the said *J.* in 200 Pieces of coined Gold, called *French Lewidores*, Foreign Money of the Value of 200 l. of like lawful Money of *Great Britain*, for so much Money before then had and received by the said *W.* for the said *J.* and to the said *J.*'s Use; and he the same *W.* being so indebted, did in Consideration thereof, &c. (*as in the first Count.*) And also whereas the foresaid *W.* afterwards, to wit, (&c. as the second Count for *Spanish Pistoles*, only omitting *French Lewidores*.) And also whereas the foresaid *W.* afterwards, to wit, on the Day, &c. (*as above to*) indebted to the said *J.* in 300 Pieces of coined Silver, call'd *Duckettoons*, being Foreign Money, of the Value of 300 l. of like lawful Money of *Great Britain*, for so much Money before then had and received by the same *W.* for the same *J.* and to the Use of the said *J.* and being so indebted, he the foresaid *W.* in Consideration thereof, did afterwards, to wit, on the Day and Year abovesaid, at *London* aforesaid, in the Parish and Ward aforesaid, assume (take) upon himself, and to the same *J.* then and there faithfully promised, &c. (*as before*) to pay the said 300 Pieces of coined Silver when required. And also whereas the foresaid *W.* afterwards, to wit, on the Day and Year abovesaid, at *London* aforesaid, in the Parish and Ward afore-

Implied.

foreſaid, was indebted to the ſaid J. in other 300 Pieces of coined Silver, called *Ducket-tons*, being Foreign Money of the Value of 300 *l.* of like lawful Money of *Great Britain*, for ſo much Money before that Time lent and accomodated by the ſame J. to the ſaid W. and he the ſaid W. being ſo indebted, did afterwards, *to wit*, the Day and Year aforeſaid, &c. promiſe to pay the ſaid 300 *Ducket-tons*, &c. (as above.) And alſo whereas he the foreſaid W. afterwards the Day and Year aforeſaid, at *London* aforeſaid, in the Pariſh and Ward aforeſaid, was indebted to the ſaid J. in 300 *l.* of lawful Money of *Great Britain*, for ſo much Money by the ſaid W. for the ſaid J. and for the Uſe of him J. before that Time had and received, he the foreſaid W. being ſo indebted, did in Conſideration thereof afterwards, *to wit*, on the Day and Year aforeſaid, at *London* aforeſaid, in the Pariſh and Ward aforeſaid, aſſume (take) upon himſelf, and to the ſame J. then and there faithfully promiſed, That he the ſaid W. would well and faithfully pay the ſaid 300 *l.* laſt mentioned unto the ſaid J. when he ſhould be thereto afterwards required. And alſo whereas the foreſaid W. afterwards, *to wit*, the Day and Year, &c. at *London*, &c. was indebted to the ſaid J. in other 300 Pieces of coined Silver, called *Spanish Crowns* of Foreign Money of the Value of 100 *l.* of lawful Money of *Great Britain*, for ſo much Money by the ſaid W. for the ſaid J. and to the Uſe of him J. before that Time had and received, and being ſo indebted, he the ſaid W. in Conſideration thereof, afterwards, *to wit*, on the Day and Year aforeſaid, at *London* aforeſaid,

7 Count, In-  
deb. Aſſum.  
for 300 *l.*

8th Count.  
For 300  
Spanish  
Crowns re-  
ceived to Uſe.

**Implied.** *aforesaid, &c. did assume, &c. to pay the said 300 Pieces of coined Silver, &c. (as before.) And also whereas the foresaid W. afterwards, &c. was indebted to the said J. in other 300 Pieces of coined Silver, called Florins of Foreign Money, of the Value of 100 l. of lawful Money of Great Britain, for so much Money by the said W. for the said J. &c. (as the foregoing, Mutat. mutand.) And also whereas the foresaid W. afterwards, &c. was indebted to the said J. in other 300 Pieces of coined Silver, called Florins, of Foreign Money, of the Value of 100 l. of lawful Money of Great Britain, for so much Money by the said J. unto the same W. before that Time lent and accomodated; and being so indebted; he the said W. in Consideration thereof, did afterwards, to wit, on the Day and Year abovesaid, at London aforesaid, in the Parish and Ward aforesaid, did assume, &c. (as before) with the usual Conclusion of not having paid and refusing to pay, &c.*

*9th Count. For 300 Florins so received.*

*10 Count. For the same lent, &c.*

To this Declaration the Defendant pleaded *Non-Assumpsit, infra sex Annos*, and the Plaintiff reply'd, that the Defendant was beyond Sea till within three Years; To which the Defendant demurred, &c. and on Argument, *Monday, April 23, 1716*, Judgment was for the Plaintiff.

*A Declaration on an Indebitatus Assumpsit, with Five Counts, i. e. for Money laid out, Work done, Goods sold, &c.*

Devon to wit. **S.** late of London, Merchant, was attached to answer to **J. B.** of a Plea of Trespass on the Case, and whereof the same **J.** by **R. B.** his Attorney, complains, That whereas the foresaid **S.** on such a Day in such a Year, &c. at Dartmouth, in the County of **D.** aforesaid, was indebted to the same **J.** in 40 l. of lawful Money of Great Britain, for so much Money laid out and expended by the said **J.** for the same **S.** and at his Special Instance and Request; and he the said **S.** being so indebted, and in Consideration thereof, afterwards, to wit, on the same Day and Year aforesaid, at **D.** aforesaid, in the County aforesaid, did assume (take) upon himself, and unto the same **J.** then and there faithfully promised, That he would well and faithfully pay (satisfy) the said 40 l. unto the said **J. B.** when he should be thereto afterwards required. And also whereas he the foresaid **S.** afterwards, to wit, the same Day and Year aforesaid, at **D.** aforesaid, was indebted to the same **J.** in other 40 l. of like lawful Money of Great Britain, as well for the Work and Labour of him **J.** before that Time done and performed by him **J.** for the said **S.** and at his Special Instance and Request, as also for divers Journeys of him **J.** before the same Time also done and performed by him **J.** for the same **S.** and likewise at his Special Instance and Request; and

In C. B.  
For Money  
laid out, and  
Work done,  
&c. Mich.  
4 Geo. 1.

1st Count. For  
Money laid  
out.

2d Count. For  
Work done,  
and Journeys  
made.

**Implied.**

3d Count. On  
a Quantum  
Meruit. for  
his Journeys.

*Averment.*

4th Count. For  
Goods sold,  
&c.

5th Count. A  
Quantum  
Valebant  
Note.

and being so indebted he the said *S.* in Consideration thereof, did afterwards, *to wit*, on the same Day and Year abovesaid, assume, &c. to pay and satisfy the said 40 *l.* last mentioned, (*&c. as the First Count.*) *And also whereas* the foresaid *S.* afterwards, *to wit*, the same Day, &c. at *Dartmouth* abovesaid, in Consideration, That the foresaid *J.* had at the like Special Instance and Request of the said *S.* made, done and performed, (as well other Work and Labour, as other Journeys for the same *S.* did assume, &c. That he the said *S.* would well and faithfully pay and satisfy unto the said *J.* so much Money as he the said *J.* had reasonably deserved to have for the same, when he the said *S.* should be afterwards thereto required; and the said *J.* in Fact saith, That he hath reasonably deserved to have of the said *S.* for the same, other 40 *l.* of like lawful Money, *to wit*, at *D.* abovesaid, whereof the said *S.* had then and there Notice given him by the said *J.* *And also whereas* the foresaid *S.* afterwards, *to wit*, the same Day and Year abovesaid, at *D.* abovesaid, was indebted to the said *J.* in other 40 *l.* of like lawful Money of *Great Britain*, for divers Goods, Wares and Merchandizes to the same *S.* by the foresaid *J.* before that Time sold and delivered, and being so thereof indebted, he the said *S.* in Consideration thereof, afterwards, *to wit*, the Day and Year abovesaid, at *D.* abovesaid, did assume, &c. to pay and satisfy the said other 40 *l.* &c. (*as before.*) *And also whereas* he the foresaid *S.* afterwards, *to wit*, on such a Day in the Year abovesaid, at *D.* abovesaid, in Consideration that the said *J.* had at the

Special

Special Instance and Request of the aforesaid *S.* before that Time sold and delivered to the said *S.* divers other Goods, Wares and Merchandizes, did assume, and to the said *J.* then and there faithfully promised, That he the said *S.* would also well and faithfully pay and satisfy to the said *J.* so much Money as the said Goods, Wares and Merchandizes last mentioned, were reasonably worth at the Time of their said Sale and Delivery, when he the said *S.* should be afterwards thereto required. And the same *J.* in Fact saith, That the said Goods, Wares and Merchandizes last mentioned, were reasonably worth at the Time of their said Sale and Delivery, other 40 *l.* of like lawful Money of Great Britain, to wit, at Dartmouth aforesaid, and the said *J.* did then and there give Notice thereof to the said *S.* yet he the foresaid *S.* not regarding his said several Promises and Assumptions so made to the said *J.* as aforesaid, but contriving and fraudulently intending, &c. (as usual.)

*Implied.*

*Averment.*

*To this Declaration there was a Special Plea, which being curious in its Kind, I shall here insert.*

AND the foresaid *S.* by *E. C.* his Attorney, comes and defends the Force and Injury, when, &c. (See before.) And as to the third, fourth and fifth Promises and Assumptions aforesaid, in the Declaration aforesaid above-mentioned, the said *S.* saith, That he the same *S.* did not assume (take) upon himself in Manner and Form as the foresaid *J.* doth above thereof declare against him,

*A Special Plea pleaded, Note; this Plea Non-Assumpt, and Issue on the 4th and 5th Promises, and a former Judgment in Bar of the 1st, 2d, and 3d, Promises.*

*Implied.* and of this he puts himself upon the Country, and the foresaid *J.* likewise. And as to the first, second and third Promises and Assumptions in the Declaration aforesaid, above-mentioned, he the same *S.* saith, That the foresaid *J.* ought not to have his Action thereof against him, because he saith, That the said *J.* did er'while (*formerly*) *to wit*, in *Hillary* Term, in the first Year of the Reign of the Lord *G.* now King of *Great Britain*, in the Court of him the said now Lord the King, of the Bank, before the Justices of that Court, the same Court being then at *Westminster*, in the County of *Middlesex*, implead the same *S.* by the Name of *S. C.* then late of *London*, Merchant, of a Plea of Trespass on the Case, and the same *S.* then and there appearing in the same Court by *E. C.* his Attorney, he the foresaid *J.* by *R. B.* his then Attorney, by declaring, complain'd, That whereas the foresaid *S.* on the first Day of *July*, in the Year of the Lord 1721, at *Dartmouth* in the County of *D.* aforesaid, was indebted to the same *J.* in 35 *l.* and 14 *s.* of lawful Money of *Great Britain*, for so much Money by the said *J.* for the same *S.* and at his Special Instance and Request, before that Time expended and laid out, and being so indebted, the foresaid *S.* afterwards, *to wit*, on the Day and Year abovesaid, at *D.* aforesaid, in Consideration thereof, assumed upon himself, and unto the same *J.* then and there faithfully promised, That he the foresaid *S.* would well and faithfully pay and satisfy to the said *J.* the said 35 *l.* and 14 *s.* when he the said *S.* should be thereof afterwards required. *And also whereas* the foresaid *S.* afterwards,

*Recital of the  
former Decla-  
ration.*

wards, *to wit*, the same Day and Year aforesaid, at *D.* aforesaid, was indebted to the said *J.* in other 35 *l.* and 14 *s.* of like lawful Money of *Great Britain*, as well for the Work and Labour of him *J.* by him *J.* for the same *S.* and at his Special Instance and Request, before that Time done and performed, as also for divers Journeys of him *J.* by him *J.* for the same *S.* and also at his Special Instance and Request before that Time made and perform'd, and being so indebted, he the foresaid *S.* in Consideration thereof, on the same Day and Year aforesaid, at *D.* aforesaid, did assume, &c. to pay the said last mentioned 35 *l.* and 14 *s.* &c. (*as usual.*) with the usual Conclusion of *Non-payment, Demand, &c.* whereof he then said he was the worse, and had Damage to the Value of 50 *l.* and thereof he then brought his Suit. And the foresaid *S.* by the foresaid *E. C.* his then Attorney, came and defended the Force and Injury, when, where, &c. and then said, That he did not assume upon himself in Manner and Form as the foresaid *J.* had above against him then complained, and thereof he put himself upon the Country, and the foresaid *J.* likewise: Therefore it was then commanded to the Sheriff, that he should Cause to come here in the *Ostaves* of the Purification of the blessed *Mary*, Twelve, &c. (*as in the Habus Corpus Jurator*) *whereto add,*

*Plea Non-Assump.*

*Hab. Corp. Jurator.*

*Postea.*

And it is to be known, That by the Justices there in Court, in this same Term, delivered a Writ thereof, to the Deputy Sheriff of the County aforesaid, to be executed in Form of Law; and afterwards, *to wit*, on the foresaid, (*such a Day*) in the said Record of

*Implies.*

of *Nisi Prius*, mentioned before *J. P. Knight*, one of the Justices of the said Lord the now King, assigned to hold Pleas before the King himself, and *James Mountague Knt.* one of the Barons of the *Exchequer*, of the said Lord the now King, being the then Justices of the said Lord the now King, assigned to take Assizes in the said County of *D.* by the Form of the Statute, came as well the foresaid *J. B.* as the said *S. C.* by their Attorneys, and the Jurors of the Jury, whereof Mention is made in the same Record, being demanded also, came, and the said Jurors being then elected, tryed and sworn to say the Truth of the Matters in Issue in the same Record also contained, did then say upon their Oath, That the said *S. C.* did not assume (take) upon himself in Manner and Form as the same *S.* had in the same Record of *Nisi Prius*, in pleading, alledged; and thereupon such was the Process of the said Court of the said Lord the now King, of the Bench here, at *Westminster*, That afterwards, *to wit*, in this present Term of *St. Hillary*, in the Third Year of the Reign of the said Lord the now King, it was considered by the same Court, That the foresaid *J.* should take nothing by his Writ, but should be amerced for his false clamour, and that the said *S.* should thereof go without Day, as by the Record thereof aforesaid, being in the said Court of the said Lord the now King, of the Bench, before the Justices of the same Court, the same Court being now at *Westminster*, in the County of *Middlesex* aforesaid, doth more fully appear; and this he is ready to aver, whereof he prays Judgment, if the foresaid *J.* ought to have his Action thereof against him, with

*Former Verdict,*

*And Judgment.*

with this, that the same *S.* will aver, That the said first Promise and Assumption in the foresaid Declaration of the said *J.* in the Record of the Judgment aforesaid, mentioned, and the said first Promise and Assumption in the said Writ and Declaration of the foresaid *J.* against him *S.* in the Court here now depending mentioned, are (one and) the same, and for (one and) the same Cause of Action, and not for other or different Causes of Action (*with the like Averments, severally upon the second and third Promises.*) And, That the foresaid *S.* in the Writ and Declaration of the foresaid *J.* against the said *S.* now depending in the Court here, and the foresaid *S. C.* named Defendant, in the Record of the Judgment aforesaid, are one and the same, and not other or different (divers) Persons: And also, That the foresaid *J.* now Plaintiff, and the foresaid *J.* named Plaintiff in the Record of the Judgment aforesaid, are one and the same Person, and not other or different Persons.

And the foresaid *J.* saith, That the Plea of the said *S.* as to the first, second and third Promises and Assumptions aforesaid, in the Declaration aforesaid, above-mentioned, above pleaded in Bar, and the Matters therein contained, are not sufficient in Law to preclude (Bar) the said *J.* from having his said Action thereof against him the foresaid *S.* and that he hath no need, nor is bound by the Law of the Land to answer to that Plea in Manner and Form pleaded; and this he is ready to aver, whereof for Default of a sufficient Answer in this particular, the same *J.* prays Judgment, and his Damages to be adjudged

Implied.  
Averment.

Demurrer to  
the Plea.

*Implied.*

judged to him by Occasion of the not performing of the said first, second and third Promises.

*Joinder in  
Demurrer.*

And the foresaid S. for that he hath above in pleading alledged sufficient Matter in Law to preclude (barr) the said J. from having his said Action thereof against him S. as to the said first, second and third Promises and Assumptions in the said Declaration above-mentioned, which he is ready to aver, (which said Matter the foresaid J. doth not deny, nor any Way answer thereto, but altogether refuses to admit that Verification) he as before prays Judgment, and that the foresaid J. as to the said first, second and third Promises and Assumptions in the said Declaration above-mentioned, may be precluded (barred) from having his said Action thereof against him S.

Note; *The above Record being of a curious Nature, I have thought fit to insert intire, whereby the Order, Method and Connection of its several Parts will be the more clearly seen; and the whole be better apprehended than if distributed under the several Heads of Pleas, Replications, Demurrers, &c. and for the same Reason I shall here insert the following Record of,*

*A De-*

*A Declaration in Assumpsit, &c. (on Four Counts) against Husband and his Wife, as Executrix, who plead the Statute of Limitations, to which the Plaintiff Demures for Cause.*

Wiltshire to wit. J. P. late of, &c. in the said County of W. and E. his Wife, Executrix of the Testament of H. H. her late Husband deceased, were attached to answer to W. P. of a Plea of Trespas on the Case; and whereof the same W. by F. S. his Attorney complains, That *whereas* the foresaid H. in his Life, to wit, on the 10th Day of J. in the Year of the Lord 1716, at H. in the said County, was indebted to the same W. in 7 l. 10 s. of lawful Money of Great Britain, for so much Money for the foresaid H. in his Life, and at his Special Instance and Request by the said W. before that Time laid out and expended (advanced) and being so indebted, he the foresaid H. in his Life, in Consideration thereof, afterwards, to wit, on the Day and Year abovesaid, at H. aforeaid, assumed, &c. (as usual.) And also *whereas* he the said H. in his Life, afterwards, to wit, on the said 10th Day, &c. at H. aforeaid, was indebted to the said W. in other 7 l. and 10 s. of like lawful Money of Great Britain, for divers Sums of Money by the said W. to the said H. in his Life, to his Use, and at his Special Instance and Request before that Time paid and advanced; and being so indebted, he the said H. in his Life, afterwards, to wit, on the same Day and Year at H. aforeaid,

In C. B.  
Against Husband and Wife  
as Executrix,  
&c. Mich.  
4 Geo. 1.

1st Count, for  
Money laid  
out.

2d Count, for  
Money paid  
to his Use, &c.

*Impley'd.*

3d Count, for  
Money had  
and receiv'd  
to the Plain-  
tiff's Use.

4th Count.  
In simul.  
comput.

aforesaid, in Consideration thereof, assumed, &c. (as usual.) And also whereas the foresaid *H.* in his Life, afterwards, to wit, the same Day and Year last mentioned, at *H.* aforesaid, was indebted to the said *W.* in other 7 *l.* and 10 *s.* of lawful Money of *Great Britain*, for so much Money by the foresaid *H.* in his Life, to the Use of him *W.* before that Time had and received, and being so thereof indebted, he the said *H.* in his Life, afterwards, to wit, the Day and Year aforesaid, at *H.* aforesaid, did assume, &c. (as usual.) And also whereas the foresaid *H.* in his Life, afterwards, to wit, the same Day and Year aforesaid, at *H.* aforesaid, had accompted with the foresaid *W.* of and concerning divers other Sums of Money to the said *W.* by the said *H.* in his Life, before that Time due, and then being in Arrear unpaid, and upon that Account he the said *H.* was then and there found in Arrearage, towards the said *W.* in other 7 *l.* and 10 *s.* of like lawful Money of *Great Britain*, and being so found in Arrearage, he the said *H.* in his Life, afterwards, to wit, the same Day and Year, at *H.* aforesaid, in Consideration thereof, did assume, &c. (as usual.) Yet the foresaid *H.* in his Life, and the foresaid *E.* since his Death, while she was Sole; and also the foresaid *J.* and *E.* after the Espousals celebrated between them, not regarding the said several Promises and Assumptions of the said *H.* in his Life, so made as aforesaid, but contriving and fraudulently intending craftily, &c. they or any (or either) of them have not paid or satisfy'd the said several Sums of Money or any Penny thereof to the said *W.* altho' he the said *H.* in his Life, afterwards, to wit,  
on

# On parol promises.

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Implied.

on the 13th Day of *J.* in the said Year of the Lord 1716, and the said *E.* since his Death, while he was Sole, *to wit,* on the 26th Day of *March,* in the Year of the Lord 1717. And also the said *J.* and *E.* since the said Espousals celebrated between them, *to wit,* on the fourth Day of *May,* in the said Year of the Lord 1717, *aforesaid,* were at *Hendon* *aforesaid* thereto requested by the *foresaid W.* but they and every of them have wholly refused to pay or satisfy the same to him; and they the said *J.* and *E.* do still altogether refuse to pay, or in any Manner to satisfy him for the same, to the Damage of him *W.* 30 *l.* and thereof, &c.

And the *aforesaid J.* and *E.* his Wife, by *H. B.* their Attorney, comes and defends the Force and Injury when, where, and in what Manner the Court here shall think fit; and say, That the *aforesaid H. H.* in his Life, at any Time within six Years next before the Day of suing forth the Original Writ of him *W.* did not assume upon himself in Manner and Form as the said *W.* doth above complain against him. And this he is ready to aver; whereof he prays Judgment, if the *aforesaid W.* ought to have his Action thereof against him.

Plea Non Assump. infra 6 Annot.

And the *aforesaid W.* saith, That the said Plea by the said *J.* and *E.* in Manner and Form above pleaded; and the Matter therein contained are not sufficient in Law to bar the said *W.* from having his said Action thereof against the *aforesaid J.* and *E.* to which said Plea he the said *W.* hath no need, nor is he bound by the Law of the Land to answer. And for Cause of Demurrer in

Demurret for Cause.

*Implied.* Law upon that Plea, he the said *W.* according to the Form of the Statute in such Case lately made and provided, shews and demonstrates to the Court here these Causes following, *to wit*, That it doth not appear in that Plea, upon what Day the original Writ in that Plea mentioned was sued forth, as he ought (to have done) and also for that that Plea is faulty, double, uncertain, and wanteth Form. And this he is ready to aver; wherefore for want of a sufficient Plea of the said *J.* and *E.* in this Particular, he the said *W.* prays Judgment; and his Damages by Occasion of the not performing of the said several Promises and Assumptions, so made by the said *H.* in his Life, in Form aforesaid, to be adjudg'd to him.

*Joinder therein.*

And the aforesaid *J.* and *E.* his Wife, say, That the said Plea by them *J.* and *E.* in Manner and Form above pleaded, and the Matter therein contained, are good and sufficient in Law to bar him the said *W.* from having his said Action against them the said *J.* and *E.* which said Plea, and the Matter therein contain'd, they the said *J.* and *E.* are ready to aver and prove, as the Court here shall award. And because the aforesaid *W.* doth not answer to that Plea, nor hath hitherto denied it; they the said *J.* and *E.* pray Judgment as before; and that the aforesaid *W.* be barred from having his Action thereof against them.

And Note, Upon arguing this Demurrer on Wednesday, February the fifth, 1717, Judgment was given for the Plaintiff Nisi.

# On parol Promises.

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Implied.

*A Declaration on a Quantum Meruit for Work and Labour, &c. and Indebitat. Assump. with a Plea in Bar, &c.*

*Middlesex to wit.* J. P. late of the Parish of *In C. B.*  
*J. Stepney, otherwise Ste-* *For Work and*  
*bonheath, in the said County of Middlesex,* *Labour, Hill,*  
*Shoemaker, was attached to answer to E. H.* *4to Geo. 1.*  
*of a Plea of Trespas on the Case; and* *Rot. 369.*  
*whereof the same E. by J. K. his Attorney,*  
*complains, That whereas the same E. on the*  
*first Day of October, in the fourth Year of*  
*the Reign of the Lord George the now King*  
*of Great-Britain, at Westminster, in the said*  
*County of Middlesex, had at the special In-*  
*stance and Request of him J. done and per-*  
*formed for him J. divers Works, Labours,*  
*and Services, in and about the Business and*  
*Affairs of him J. he the said J. did on the*  
*same Day and Year, at Westminster aforesaid,*  
*in Consideration thereof, assume, &c. to pay*  
*unto the said E. all such Sums of Money,*  
*as he the said E. had reasonably deserved to*  
*have for his said Work, Labour and Services.*  
*And he the said E. in Fact saith, That he*  
*reasonably deserved to have of the said J.*  
*for the same Work, Labour and Services, the*  
*Sum of 20*l.* of lawful Money of Great-Bri-*  
*tain, whereof the said J. had on the same*  
*Day and Year Notice, to wit, at Westminster*  
*aforesaid, in the County aforesaid. And also*  
*whereas, &c. (i. e. an Indeb. Assump. laid as*  
*usual, with the usual Conclusion of a Breach of the*  
*Assumptions and Promises.)*

K 3

And

*Implied.  
Plea in Bar.*

And the aforesaid J. by J. O. his Attorney, comes and defends the Force and Injury, when, where (*see before*) and saith, That the said E. ought not to have his Action thereof against him, because he saith, That after the several Promises and Assumptions so made as aforesaid, *to wit*, on the sixth Day of *October*, in the fourth Year of the Reign of, &c. at *Westminster* aforesaid, in the County aforesaid, he the said J. paid to the said E. 20 l. — Which said 20 l. he the said E. did then and there accept, in full Satisfaction and Discharge of all the Moneys due by the several Promises and Assumptions in the Declaration of the said E. above mentioned. And this he is ready to aver; whereof he prays Judgment, if the aforesaid E. ought to have thereof his Action against him.

*Replication.*

And the aforesaid E. saith, That for any Thing by the said J. before alledg'd, he ought not to be precluded from having his Action aforesaid against the said J. because he saith, That the said J. did not pay to the said E. the aforesaid 20 l. in Manner and Form as the aforesaid J. hath above by (his Plea) pleading alledg'd. And he prays that this may be inquired by the Country, &c.

*Judgment.*

*To this there was a Demurrer and Joinder, and on Friday, February the seventh, 1717, Judgment for the Plaintiff.*

*A Dec.*

*A Declaration and Pleadings with the Issue, Verdict, &c. in Case for Money laid out by a Tenant.*

Warwick to wit. **T**. Savage, late of Ratley, County afore said, Gentleman, was attached to answer to *K. Walker*, Widow, of a Plea of Trespass on the Case; and whereof the same *K.* by *G. K.* her Attorney, complains, That whereas the afore said *K.* before the first Day of July, in the Year of the Lord 1713, had at the proper Charges and Costs of her *K.* sowed divers Quantities of Pease and Vetches, in and upon divers Parcels of Land, containing by Estimation 10 Acres, lying in the Common Field of *Ratley* afore said, in the County afore said, and had erected divers Hedges and Fences made of Furzes, Thorns, and Brushwood, for Preservation of the said Pease and Vetches, while there growing, which said Pease and Vetches were then there growing, *to wit*, on such a Day, &c. He the said *T.* afterwards, *to wit*, the same Day and Year last mentioned at *R.* afore said, in Consideration that she the said *K.* would at the special Instance and Request of him *T.* permit the said *T.* to cut down and mow the afore said Pease and Vetches, and pull up the afore said Hedges, and to take and carry away the said Pease and Vetches, and the Wood of the said Hedges and Fences, and to have and dispose of the same to the proper Use of the said *T.* he the said *T.* did assume, and then and there faithfully promised to the said *K.*

In C. B.  
Case for Money laid out by  
a Tenant.

Trin. 1 Geo.

1st Count.  
Quantum  
extra posuit,  
&c.

K 4

That

*Implied.*

That he the said *T.* would well and faithfully pay and satisfy to the said *K.* all such Sums of Money, as she the said *K.* had paid, expended, or laid out, for the Seed of which the said Pease and Vetches were produced: And also all such Sums of Money as the same *K.* had paid, &c. for ploughing of the Land aforesaid, whereupon the said Seed was sown; and for sowing of the said Seed; and for making the Hedges and Fences; and for the Thorns and Wood of which the said Hedges and Fences were made (when he should be thereto afterwards required) And the same *K.* in Fact saith, That she the said *K.* trusting to the Promises and Assumptions

*1st Averment.* of the said *T.* made in the Form aforesaid, did permit the said *T.* to cut down and mow the said Pease and Vetches, and to pull up the said Hedges, and to take and carry away the same Pease and Vetches, and Wood arising off the said Hedges, and to have and dispose of the same to the proper Use of the

*2d Averment.* said *T.* And farther in Fact saith, That she the same *K.* before the Time of making the Promises and Assumptions aforesaid, had paid and laid out for the Seed of which the said (Oats instead of) Pease and Vetches were produced; and for sowing of the Seed, and for making the Hedges aforesaid, the Sum of 10*l.* and 1*s.* of lawful Money of *Great-Britain*, to wit, at *R.* aforesaid; and thereof the said *T.* had Notice, to wit, on the second Day of *June*, in the Year aforesaid. And also whereas the aforesaid *K.* afterwards, to wit, on the same Day and Year last mentioned, at *R.* aforesaid, had at the like special Instance and Request of the said *T.* sold

*2d Count.*  
*For Goods*  
*sold, &c.*

to

## On Parol Promises.

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Implied.

to the said T. divers other Goods of the said K. and by the said T. had and received; he the said T. in Consideration thereof, did take upon himself, and unto the same K. then and there faithfully promised, That he the said T. would well and faithfully pay to the said K. so much Money as the said Goods last mentioned were reasonably worth at the Time of their Sale, when he should be afterwards thereunto required. And the same K. in Fact faith, That the said Goods last above mentioned were reasonably worth at the Time of their said Sale and Delivery, to the Value of 10 l. and 1 s. of like lawful Money of Great-Britain, to wit, at R. aforesaid; whereof the said T. afterwards, to wit, on the Day and Year last mentioned. had there Notice. And also whereas the said T. afterwards the same Day and Year last mentioned, at R. aforesaid, was indebted to the said K. in other 10 l. and 1 s. of lawful Money of Great-Britain, for divers other Goods, Wares, and Merchandizes of her K. to the said T. by the said K. at the special Instance and Request of him T. before that Time sold, and by him T. had and received; And being so indebted he the said T. in Consideration thereof, afterwards, to wit, the same Day and Year last mentioned, at R. aforesaid, did take (assume) upon himself, and unto the same K. then and there faithfully promised, That he the same T. would well and faithfully pay and satisfy the said 10 l. and 1 s. unto the said K. when he should be thereto afterwards required; Yet he the said T. not regarding his said several Promises and Assumptions aforesaid; but contriving and fraudulently intending, craftily

3d Count.  
Ind. Assump.  
For Goods  
sold.

## Declarations, &amp;c.

**Implied.** craftily, &c. (as usual) to the Damage of her K. 30 l.

*Issue and Verdict for the Plaintiff.*

*To this Declaration the Defendant pleads Non Assumpsit, and thereupon at Issue a Verdict is for the Plaintiff.*

*The Postea whereof is thus.*

**The Postea.**

Afterwards, at the Day and Place within contained, before *Samuel Dodd*, Knt. Chief Baron of the *Exchequer*, of the Lord the now King; and *John Prat*, Knt. one of the Justices of the said Lord the now King, assigned for Pleas to be held before the Lord the now King himself, Justices of him the Lord the now King, assigned to take Assizes in the County of *Warwick*, by the Form of the Statute, &c. came as well the within named *K. Walker*, Widow, as the within named *T. Savage*, by their Attorneys within contained. And the Jurors of the Jury, whereof Mention is within made, being demanded likewise, came, who being elected, try'd, and sworn to say the Truth of the (Matter in Issue) within contained, do say upon their Oath, That the aforesaid *T. S.* did (take) assume upon himself, in Manner and Form as the aforesaid *K.* doth within complain against him, and they assess the Damages of her *K.* by Occasion of the not performing of the Promise and Assumption within contained (besides his Charges and Costs by him laid out (expended) about his Suit in this Particular) to 10 l. and 1 s. and for those Costs and Charges to 53 s. and 4 d. Therefore, &c.

*And here I beg leave to insert a Postea according to the modern Form, viz.*

*A Postea*

*A Postea in Middlesex in Assumpsit, on several (Counts) Promises, one whereof is found for the Plaintiff, and the Residue for the Defendant.*

**A**fterwards, at the Day and Place within contained, before *Robert Lord Raymond*, the Chief Justice within written (*John Smith*, Gentleman, being associated unto him by the Form of the Statute) there came as well the within named *R. W.* as the within written *W. R.* by their Attorneys within contained; and the Jurors of the Jury, whereof Mention is within made, being demanded likewise, came; and being elected, try'd, and sworn to say the Truth of the (\* Matters in Issue) within contained, do, as to the fifth Promise and Assumption, in the Declaration within written, say upon their Oath, *That the said W. R. did assume (take) upon himself, in Manner and Form as the aforesaid R. W. doth within declare against him.* And they do assess the Damages of him *R. W.* by Occasion of the not performing of that Promise and Assumption, besides the Charges and Costs by him laid out about his Suit in this Particular, to 21 l. 11 s. 11 d. and for those Costs and Charges to 40 s. And as to the Residue of the Promises and Assumptions in the within written Declaration contained, the same Jurors do further say upon their Oath, *That the said W. R. did not assume* (take)

*Note, The Form of this Postea was lately settled by the Ch. J. as 'tis said.*

\* This is usually omitted, but ought to be inserted as relative to the Jurors Oath.

*Expressed.* (take) upon himself in Manner and Form as the aforesaid *R. W.* doth within declare against him. Therefore, &c.

*A Declaration on a Parol Promise to save one harmless upon an Obligation.*

*In B. R.  
To save one  
harmless upon  
an Obligation.*

**E.** B. complains of *R. C.* in the Custody of the Marshal, &c. for that, to wit, that whereas the aforesaid *E.* (*such a Day and Year*) at *H.* in the County aforesaid, at the special Instance and Request of the aforesaid *R.* by his Writing Obligatory, bearing Date the same Day and Year, was bound together with the aforesaid *R.* and for the sole Debt of the said *R.* unto one *S. B.* upon Condition there under-written, that if the aforesaid *R. C.* should pay unto the aforesaid *S. B.* at a certain Day in the same Condition contain'd, 18 *l.* of lawful, &c. that then that Writing should be void, and of none Effect, or otherwise to remain in full Strength and Virtue; the aforesaid *R.* afterwards, that is to say (*such a Day and Place*) in Condition aforesaid, assumed upon himself, and to the aforesaid *E. B.* then and there faithfully promised, that he the said *R.* at all Times then afterwards, should and would discharge and save harmless the aforesaid *E.* against the aforesaid *S.* of and from the aforesaid Writing Obligatory. Yet nevertheless the aforesaid *R.* his Promise and Assumption aforesaid not regarding, hath not hitherto discharged the aforesaid *E.* of or from the aforesaid, Writing Obligatory, altho' he hath been often requested by him the said *E.* so to do, where-

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whereupon the said E. saith, that he is very much the worse, and hath Damage, &c.

*Implied.*

*A Declaration in Assumpsit for Taylor's Work, &c. with a Plea of Infra Etat, Replication, Demurrer for Cause, &c.*

*Probleter to wit.* **W**. F. of London, Esq; *In C. B.*  
 was attached to an- *For Taylors*  
 swer to M. G. of a Plea of Trespas on the *Work, &c.*  
 Case; and whereof the same M. by J. K. his *Mich. 4to*  
 Attorney, complains, That whereas the a- *Geo 1.*  
 foresaid W. on the 20th Day of April, in the  
 third Year of the Reign of the Lord the now  
 King, at Islington in the said County of M.  
 was indebted to the foresaid M. in 300 l. of  
 lawful Money of this Kingdom, as well for  
 Taylors Work by him M. for the said W. *For Work done,*  
 and at his Instance before that Time done *and Money*  
 and perform'd; as also for divers Sums of *laid out.*  
 Money by him M. for the said W. and at his  
 (Request) Instance before that Time advan-  
 ced (expended) and laid out. And being so  
 thereof indebted he the said W. in Consid-  
 eration thereof, afterwards, *to wit*, on the  
 Day and Year afore said, at I. afore said, did  
 assume (take) upon himself and to the same  
 M. then and there faithfully promised, That  
 he the said W. would well and faithfully pay  
 the said 300 l. unto the said M. when he  
 should be afterwards thereto required. And  
 also whereas the foresaid W. afterwards, *to*  
*wit*, on the same Day and Year afore said, at  
 I. afore said, in Consideration that the afore-  
 said M. had at the like Request of him W.  
 made up and fitted, and adorned (trimmed)  
 for *Quantum*  
*Meruit for*  
*Garments*  
*made, &c.*

**Implied.**

for the same *W.* divers Vestments (Garments) and at the like Instance and Request of him *W.* found and provided for the same *W.* divers Goods, Wares, and Merchandizes in and about the making and fitting up, and trimming of the said Garments, (*necessary and convenient to be used and worn*) did assume, &c. That he the said *W.* would well and faithfully pay to the said *M.* so much Money as he the said *M.* did reasonably deserve to have for the making fitting up, trimming, and adorning of the said Garments so necessary and convenient to be used and worn. As also all such Sums of Money as he the said *M.* had advanced (should advance and expend) in and about the making and fitting up, and trimming of the same Garments (*when he should be thereto required*) And the

**Overment.**

the aforesaid *M.* in Fact saith, That he did make and fit up, &c. and that he reasonably deserved to have of the said *W.* for the said making and fitting up, and trimming of the said Garments, 100 *l.* of lawful Money of this Kingdom. And also, That he the said *M.* advanced and laid out for the Goods, Wares, and Merchandizes used in and about the making, fitting up, and trimming of the said Garments, the Sum of 200 *l.* of like Money, *to wit*, at *I.* aforesaid, whereof he the said *W.* on the said 20th Day of *April*, at *I.* aforesaid, had Notice. And also whereas the aforesaid *W.* afterwards, *to wit*, on the the same 20th Day of *April*, in the Year aforesaid, at *I.* aforesaid, was indebted to the aforesaid *M.* in 200 *l.* of like lawful Money, for so much Money by the same *M.* for the said *W.* and at his Request before that Time laid

**Ind. Assump.**  
for 200 *l.*

laid out and expended; and being so indebted, he the said *W.* in Consideration thereof, afterwards, *to wit*, on the the same 20th Day of *April*, in the third Year aforesaid, at *l.* aforesaid, assumed upon himself, &c. (*as usual*) And also whereas the aforesaid *W.* afterwards, *to wit*, on the same 20th Day of *April*, &c. (*as before, on an Infimul Computaverunt of 200 l.*) for Taylors Work; *Mutatis mutandis, with the usual Conclusion.*

*Impleta.*

*To which the Defendant pleads, That he was*  
*Infra Ætatem, thus.*

And the aforesaid *W.* by *R. A.* his Attorney, comes and defends the Force and Injury, when, where, &c. and saith, That the aforesaid *M.* ought not have his Action thereof against him, because he saith, That at the said several Times wherein the several Promises and Assumptions in the said Declaration above mentioned were made; he the said *W. F.* was within the Age of 21 Years. And this he is ready to aver; whereof he prays Judgment, if the aforesaid *M.* ought to have his Action thereof against him.

*Plea of Infra Ætatem.*

*Richard Wynne.*

And the aforesaid *M.* saith, That he for any Thing by the said *W.* above in Pleading alledged, ought not to be barred from having his said Action against him, because by protesting that the aforesaid *W.* at the several Times wherein the several Promises and Assumptions, mentioned in the above Declaration, were made, was not within the Age of 21 Years, as the aforesaid *W.* hath

*Replication.*

*Protestando.*

## Declarations, &amp;c.

*Implied.* above in pleading alledged. For Plea he the same *M.* saith, That the Taylors Work, and the several Sums of Money in the Declaration above mentioned, were done, performed, and laid out and expended (advanced) by the said *M.* for the said *W.* for the convenient and necessary Apparel and Cloathing of the (Person and) Body of the said *W.* And this he is ready to aver; whereof he prays Judgment and his Damages, by Occasion of the not performing of the several Promises and Assumptions aforesaid, to be adjudged to him.

*James Selby.*

*Demurrer for Cause.*

And the aforesaid *W.* saith, That the Plea of the said *M.* above, by replying, pleaded, and the Matter therein contained are not sufficient in Law, to have him the said *M.* to maintain his said Action against him the said *W.* and that he to that Plea in Manner and Form pleaded, has no need, nor is he bound by the Law of the Land in any Manner to answer. And this he is ready to aver; whereof he prays Judgment if the aforesaid *M.* ought to have his Action thereof against him. And for Cause of Demurrer in Law upon that Plea, he the said *W.* according to the Form of the Statute in such Case lately made and provided, shews and demonstrates to the Court here, these following Causes, *to wit*, for that he the said *M.* hath not by distinguishing alledged (distinctly shewn) how much Money was due to him for Taylors Work done, and how much was due to him for Money (advanced) laid out and expended  
as

## On Verol Promises, &c.

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as he ought to have alledged; and that the Replication aforesaid is uncertain, and only argumentative, not aptly pleaded, nor can any Issue be joined thereupon by the said *W.* for that the Matters in the same Plea contained are put (placed) accumulatively in Issue, whereas in this Case they ought to have been put (placed) distributively; and also that the said Plea wants Form, &c.

*Richard Wynne.*

*Whereupon Serjeant Selby joined in Demurrer; and the Cause being learnedly argued by the said Serjeant on Tuesday, November the 19th, 1717, Judgment was given for the Plaintiff.*

*A Declaration on an Infimul Computaverunt against Executors, with a Demurrer thereto, &c.*

Southampton to wit. **W**. C. late of the Parish of *Portsea*, in the said County, Gentleman, and *D. Wall* late of the Parish of *Hayling*, in the same County, Clerk, and *J. Smith* late of *Newport* in the *Isle of Wight*, in the same County, Chirurgeon, Executors of the Testament of *W. S.* late of the Parish of *P.* aforesaid, in the said County, Gentleman, deceased, were attached to answer to *J. Mellish* of a Plea of Trespass on the Case; and whereof the same *J.* by *C. B.* his Attorney, complains, That whereas the aforesaid *W. S.* in his Life, and at the Time of his Death, was

In C. B.  
Infimul.  
computav.  
Against Executors, Plaintiff.  
Geo. 1.

L. indebted

*Expressed.*

indebted to the said *J. M.* in divers Sums of Money, *to wit*, at *P.* in the County aforesaid, they the said *W. Cooper, S.* and *J.* after the Death of the said *W. S. to wit*, on the first Day of *April*, in the Year of the Lord 1714, at *P.* aforesaid, and he the said *J. M.* at the special Instance and Request of the said *W. C. B.* and *J.* to the said *J. M.* then and there made, did account together between themselves of the aforesaid divers Sums so due and payable to the said *J. M.* by the said *W. S.* And upon that Account he the said *W. S.* was found to have been in Arrearage at the Time of his Death, unto the same *J.* in 609 *l.* 8 *s.* 11 *d.*  $\frac{2}{3}$  of lawful *English* Money. And that he the said *W. S.* being so found in Arrearage at the Time of his Death, they the said *W. C.* and *J.* did, in Consideration of the Premises, then and there assume (take) upon themselves, and unto the same *John* faithfully promised to pay unto him the same Sum of Money at or before the 25th Day of *December* then next following. Yet they the aforesaid *W. C. D.* and *J. S.* not regarding their Promises and Assumption made in the Form aforesaid; but contriving and fraudulently intending, craftily and subtilly to deceive and defraud the said *J. M.* in this Particular, have not yet paid to the said *J. M.* the said Sum of Money, nor any Penny thereof, nor in any Manner satisfied him for the same, altho' to do this they were afterwards required (requested) *to wit*, on the first Day of *April*, in the second Year of the Reign of the Lord the now King, and afterwards at *P.* aforesaid; but they and each of them have hitherto refused, and still do refuse

fuse in any Manner to pay or satisfy him for the same, to the Damage of him *J. M.* 300 *l.* and thereof he brings his Suit. *Expressed.*

To this Declaration there was a Demurrer for Cause, viz.

And the aforesaid *W. C. D. W.* and *James S.* by *E. H.* their Attorney, come and defend the Force and Injury, when, where, and in what Manner the Court here shall think fit, and pray Judgment of the Declaration aforesaid; because they say that the Declaration aforesaid, and the Matters therein contained, are not sufficient in Law for him the said *J.* to have his said Action to be maintained against them the said *W. C. D. W.* and *J. S.* to which said Declaration they the said *W. D.* and *J.* have no Need, nor are they bound by the Law of the Land, in any Manner to answer. And this they are ready to aver; whereof (wherefore) for Default of a sufficient Declaration in this Particular, they the said *W. D.* and *J.* pray Judgment of the Declaration aforesaid; and that the said *J. M.* may be barred from having his Action against them. *Demurrer to the Declaration.*

And for Causes of (their) Demurring in Law, they shew these following, to wit, That it does not appear by the said Declaration, when (at what Time) the aforesaid *W. S.* died, nor for what Consideration they the said *W. C. D. W.* and *J. S.* were indebted (assumed) And also for that by the said Declaration, they the said *W. C. D. W.* and *J. S.* are charged in their own proper Rights (they being only Executors) and because it is uncertain, double, and wants Form. *Causes of the Demurrer.*

*Implied.  
Judgment for  
the Plaintiff.*

Note, On the Plaintiff's joining in this Demurrer the same was argued on Wednesday the 22d of May, 1717, and Judgment was thereupon given for the Plaintiff.

It may be here observed, that the foregoing Instances of Declarations and Pleadings are chiefly founded on Nonfeasances, expressed either in Writing, or by Word, and which include all the Species of Actions founded on express Promises, i.e. Assumpsits Indebitatus, Assumpsits Quantum Meruits, Quantum Valebants, Mutuatus's, Infimul Computassents, before specified. But there are other Declarations which are founded upon Promises by Implication, i. e. such Promises as are raised by an Implication in Law, as not taking Care of ones Fire, whereby another's House is burnt; not cleansing ones Ditch, whereby my Land is overflow'd; not placing a Buoy in the River, whereby my Vessel is hurt by an Anchor; not repairing ones Fences, whereby my Corn or Grass is trodden down, or eaten by others Cattle, &c.

*A Declaration for not repairing ones Fences, whereby the Plaintiff's Beasts escaped and were impounded.*

*In C. B.  
Not repairing  
Fences. &c.  
See Lilly's  
Entr. 69.  
2 Salk. 768.*

York to wit. **H.** K. late of B. in the County aforesaid, Gentleman, was attached to answer to T. H. Knt. of a Plea of Trespass on the Case, and whereof he the same T. by J. A. his Attorney, complains, That whereas the aforesaid T. on the first Day of September, in such a Year of the Reign of the Lord George the Second, now King

King of Great-Britain, was seized (possessed) *Implied.*  
 and yet is seized (possessed) &c. of and in a certain Close call'd the *Willowbeer*, situate, lying, and being in *B.* aforesaid, which said Close now is, and from the Time whereof the Memory of Man is not to the contrary, hath been next adjoining and contiguous to a certain Close of him *H.* called *F.* in *B.* aforesaid, and in the County aforesaid, on the South Part (Side) thereof, which said Close of him *H.* during the whole Time aforesaid, hath been, and still is next adjoining and contiguous on the East Part thereof, to a certain common Field call'd *East Common*, situate *Prescription*  
 in *B.* aforesaid, in the County aforesaid. *to repair, &c.*  
 And whereas he the aforesaid *H.* and all those whose Estate the same *H.* now hath of and in the aforesaid Close call'd *F.* have used and been accustomed to repair and amend the Hedges and Fences, between the Close of the said *T.* call'd *W.* and the Close of him *H.* called *F.* with all necessary Reparations, as often as was needful; yet he the aforesaid *H.* contriving and maliciously intending *The Cause of*  
*Action.*  
 wholly to bar and deprive the said *T.* from all Profit and Benefit of his said Close, did afterwards, *to wit*, on the said first Day of *September*, in the Year aforesaid, permit and suffer the Hedges and Fences aforesaid, so separating and dividing the aforesaid Close of the said *T.* call'd *W.* from the said Close of him *H.* call'd *F.* to be broken, laid open, and greatly decay'd for Want of Reparation. And also the Hedges and Fences of his said Close called *F.* separating and dividing his said Close called *F.* from the said Common Field called *E.C.* to be also broken (prostrate)

*Implied.*

thrown down, and greatly decay'd, whereby one Cow of him *T.* of the Price of 5 *l.* on the said first Day of *September*, in the Year aforesaid, then depasturing in the said Close of him *T.* call'd *W.* did thro' the Gaps and Breaches of the said Hedges, escape and stray from (out of) the said Close of him *T.* call'd *W.* into the aforesaid Close of him *H.* call'd *F.* and from thence for Default of Repairing of the said Fences by him *H.* as aforesaid, into the aforesaid Common Field, call'd *E.C.* whereby (by Pretence whereof) he the said *H.* afterwards, *to wit*, on the said first Day of *September*, in the Year aforesaid, did take the said Cow of him *T.* so being found in the said Common Field, called *E. C.* and then impounded the same Cow at *B.* aforesaid; which said Cow so being in the Pound aforesaid, and by Means of the said Impounding, afterwards, on *such a Day*, in the Year aforesaid, there died; whereof he the said *T.* saith, That he is the worse, and hath Damage to the Value of 7 *l.* and thereof he brings his Suit.

*A Declaration for not taking care (i. e. negligent keeping) of his Fire.*

In B. C. For neglecting his Fire. See Lilly 69. Note, This is laid on the Custom of England, see 3 Lev. 356.

*Middlesex to wit.* **R.** B. late of *London*, Esq; *J. B.* late of *London*, Esq; and *W. H.* late of *London*, Gentleman, were attached to answer to *J. W.* Gentleman, of a Plea of Trespass on the Case; and whereof he the same *J. W.* by *J. L.* his Attorney, complains, That whereas, according to the Law and Custom of *England* hitherto used, and approved, every

every Person within *England* aforesaid, is *Implied.*  
 (and hath been beyond the Time whereof the  
 Memory of Man is not to the contrary) bound  
 to keep his Fire by Night and by Day, so  
 that for Default of keeping his said Fire no  
 Damage may in any Manner arise (happen)  
 to his Neighbours; yet the said *R. B.* on the  
 10th Day of *August*, in the fourth Year of  
 the Lord *George* the Second, now King of  
*Great-Britain*, did so negligently and impro-  
 vidently (carelessly) keep his Fire at the Pa-  
 rish of *St. Martins in the Fields*, in the said  
 County of *Middlesex*, That for Default of  
 the good keeping of that Fire, one Mansion  
 House of him *J. W.* (in the Parish and Coun-  
 ty aforesaid, being in the Possession of him  
*J. W.* and of which he the said *J. W.* was then  
 and there, and yet is possessed for the Residue  
 (Remainder) of a Term of eleven Years then  
 to come; which said Term did begin at the  
 Feast of *St. M.* in the 13th Year of the  
 Reign of the late Lord *George* the First, late  
 King of *Great-Britain*) was burnt down, and  
 by the said Fire consumed; and also divers  
 Goods of him the said *J. W.* in the same  
 House then being, were thereby consumed  
 (destroy'd) *to wit*, one Study of Books,  
 four *Turkey* Work Carpets, four *Mohogo-*  
*ny* Tables, three *Scrutores*, &c. (naming  
 all the Goods, Linnen, and Woollen Appa-  
 rel, Plate, &c. lost) amounting in the Whole  
 to the Value of 1500 *l.* to the great Loss and  
 Damage of him *J. W.* whereof he the said  
*J. W.* saith, That he is the worse, and hath  
 Damage to the Value of 1500 *l.* and thereof  
 he brings his Suit, &c.

Amplified.

*A Declaration for not putting a Buoy to an Anchor, whereby the Plaintiff's Ship was split, bulged, &c.*

In B. R.  
For not put-  
ting a Buoy to  
an Anchor,  
&c. Mich.  
10 W. 3.  
See Lilly 80.

*Middlesex to wit.* **G.** H. complains of **M. T.** **G.** in Custody of the Marshal of the *Marshallsea*, of the Court of the Lord the now King, before the King himself; for that, *to wit*, whereas he the aforesaid **G.** on the 23d Day of *September*, in the Year of the Lord 1730, at the Parish of *Stebonheath*, otherwise *Stepney*, in the County aforesaid, was and yet is the Master of a Ship call'd the *H.* then and there being in the River of *Thames*, in the Parish and County aforesaid, the said River being then a navigable River, and a common Highway; which said Ship was then moored to the Shore in the Parish and County aforesaid. And whereas he the aforesaid **M.** on the same Day and Year, and before, was and yet is Master of a Ship call'd the *R.* then and there being near the said Ship of him the said **G.** **H.** he the said **M.** contriving and maliciously intending very much to hurt and prejudice the said **G.** did then and there cast a certain Anchor affix'd to a Rope (Cable) out of the said Ship call'd the *R.* into the said River; and continued (permitted) the said Anchor to lie there, by the Space of ten Hours, during which Space he the said **M.** did not affix (annex) any Buoy to the said Anchor, to shew where the said Anchor was placed; by Reason whereof the said Ship of the said **G.** call'd the *H.* afterwards, *to wit*, on the  
3  
Day

Day and Year aforesaid, in the Parish and County aforesaid, did on the Ebbing of the Tide, for Default of affixing a Buoy to the said Anchor, in the said River of *Thames*, in the Parish and County aforesaid, fall (foul) upon the said Anchor, for the said Default of the aforesaid *M.* and by Occasion (Means) thereof, was so much split (broken) that the same Ship then and there sunk, &c. And whereas, for that, *to wit*, That by the Custom of *England* used and approved, from the Time whereof the Memory of Man is not to the contrary, all Masters of Ships, whose Ships are riding at Anchor, in any navigable River within *England*, have used, and for the whole Time aforesaid have been accustomed, and ought to fix a Buoy to the Anchors which hold (restrain) their said Ships, whereby the other Ships being in that River, may by observing the said Buoy, avoid the same Anchors, so that they may not be hurt (damaged) by them. And also whereas he the said *G.* afterwards, *to wit*, on the aforesaid 30th Day of *December*, in the Year last aforesaid, at the said Parish of *Stebonheath*, otherwise *Stepney*, in the County aforesaid, was and yet is Master of another Ship call'd the *H.* then being in the said River *Thames*, in the Parish and County aforesaid; which said Ship was moored to the Shore, in the Parish and County aforesaid. And whereas the aforesaid *M.* was then and there Master of a certain other Ship call'd the *R.* lying at Anchor in the aforesaid River *Thames*, in the Parish and County aforesaid, near the said last mentioned Ship of him the said *G.* yet he the said *M.* contriving and maliciously intending

Implied.

The Custom  
set forth, &c.  
Note, The  
Declaration  
might have be-  
gun with this.

2d Count.  
Of the same  
Ship.

Implied.

intending very much to hurt and injure (prejudice) him the said *G.* did then and there cast a certain Anchor into the aforesaid River *Thames*, in the Parish and County aforesaid, near the said last mentioned Ship of the said *G.* to which Anchor he the said *M.* ought to have affixed (annexed) a Buoy according to the Custom aforesaid. Yet he the said *M.* then and there continued the said Anchor in the said River *Thames*, for the Space of twenty Hours then next following, without any Buoy being affix'd to the Anchor of the said last mentioned Ship of him *M.* whereby (or by Means whereof) the said last mentioned Ship of him *G.* afterwards, *to wit*, on the Day and Year abovesaid, in the Parish and County aforesaid, did on the Ebbing of the Tide, for Default of affixing a Buoy to the said Anchor of the last mentioned Ship of the said *M.* in the said River *Thames*, in the Parish and County aforesaid, fall upon the said Anchor of him *M.* whereby the said last mentioned Ship of the said *G.* being laden with Sea-Coals, and falling on the said Anchor of the said *M.* so left without a Buoy as aforesaid, was so much split and torn, that the same Ship then and there sunk; whereof the said *G.* saith, That he is the worse, and hath Damage to the Value of 200 *l.* and thereof he brings his Suit.

A De-

*A Declaration by an Occupier of Land,  
against the Rector, for not taking away  
Tyth-Hay set out.*

Suffer to wit. **R.** S. complains against **J.** Note; the Original seems to be laid in the Liberty of Battle in Suffex. See Lilly 19. **D.** Clerk, of a Plea of Trespass on the Case, and there are Pleiges of Prosecution, to wit, **J. Doe** and **R. Roe**, and whereof the same **R.** by **E. P.** his Attorney, complains, That whereas the said **J. D.** on the 23d Day of *June*, in the Third Year of the Reign of the Lord *George* the Second, now King of *Great Britain*, was, and long before and continually afterwards hitherto hath been, and yet is Rector of the Parish Church of *W.* in the County of *S.* and within the Jurisdiction of this Court. *And also whereas* the Tythes of Sheafs (Corn) Grain and Hay, within the Parish (Liberty) aforesaid, from Time to Time growing, renewing or arising within the said Parish are payable, and from the Time whereof the Memory of Man is not to the contrary, have been payable to the Rector of the said Church for the Time being, and the Proprietors (Owners) of any Sheafs, Grain and Hay growing, renewing and arising within the said Parish, have during the whole Time aforesaid, been used, and accustomed, and ought to separate, lay out, and leave the Part or Tythes of their said Sheafs, Grain and Hay, divided and separated from the nine Parts, for the Use of the Rector of the said Church for the Time being, which said Tythes so as aforesaid, divided, separated,

*Implied.*

separated, laid out, and left the Rectors of the said Church for the Time being, have at their own proper Charges and Costs, within convenient Time after the Division, Separation, laying out, and leaving thereof, and Notice to them given, been used, and ought to be taken and carried away from off the said Lands, upon which the same Tythes grew, renewed and arose. *And also whereas* he the said *R.* on the 24th Day of *June*, in the Third Year of the Reign of the said Lord *Geo.* the Second, now King of *Great Britain*, and long before and continually afterwards hitherto hath been, and yet is Possessor and Occupyer of a certain Close of Meadow Land, with the Appurtenances, called the *King's-Hill*, otherwise *Kingsland Meadow*, lying in *W.* aforesaid (and within the Jurisdiction aforesaid) containing by Estimation 18 Acres, and being so thereof possessed, he the same *R.* afterwards, *to wit*, on the 28th Day of *June*, in the Year aforesaid, mowed the same Meadow, and then and there, within the same Jurisdiction, made the Grass so mowed into Cocks of Hay, and after the said Hay was so put into Cock, did also then and there (within the same Jurisdiction) in due Manner divide and separate the Tythe, or 10th Part from the other nine Parts, and laid out and appointed the same 10th Part for the Use of the said *John* (to be taken and carried away by the said *John*) then and yet Rector of the said Church; And also he the said *R.* did afterwards, *to wit*, on the 29th Day of *June*, in the Year aforesaid, at *W.* aforesaid, and within the Jurisdiction aforesaid, give Notice thereof to the said *J.* the said then and yet Rector

*This Notice seems needless.*

Rector of the said Church; yet he the foresaid J. being not ignorant of the Premises, but contriving and maliciously intending to hinder and deprive him R. from having and receiving the Profits of the said Close, did not take or carry away from off the said Close the said Tythes, or 10th Part of the said Hay, to wit, 25th Cocks of Hay, so divided separated, laid out and left for Tythes as aforesaid, but permitted and suffered the said 25 Cocks of Hay to stand and remain for a long Time upon the said Land, to wit, from the said 29th Day of June, until the 26th Day of August then next following, whereby he the said R. the Profit of the said Close, during that Time totally lost, and was deprived of, to the Damage of him R. 5*l.* and thereof he brings his Suit.

*And here give me leave to insert a few other Precedents relating to Tythes.*

*A Declaration on the Statute 1 Edw. 6. for not setting out Tythes of Sylva Cædua, &c.*

Hertford to wit. J. M. late of B. in the County of Bath and Baronet, was summoned to answer to T. M. of a Plea, That he render to him 144*l.* which he owes to him, and unjustly detains, and whereof he the same T. M. by C. N. his Attorney saith, That whereas by a certain Act of Parliament of the Lord Edward the Sixth, late King of England, at Westminster, in the County Middlesex, it was among other Things, enacted by the Authority of the

In C. B.  
For not setting  
out Tythes,  
&c. See Lilly  
75.

**Implied.**

*The Recital  
of the Statute  
Quare, and  
See the Stat.*

*The Forfeiture*

*Note ;  
Plaintiff  
Farmer of  
Tythes in W.  
&c.*

the same Parliament, That every Subject of the Lord the King, should thence forward (afterward) truly, and without Fraud or Guile (Covine) divide, set out, yeild and pay all his Prædial Tythes in their proper Kind, as the same should renew or happen (arises) in such Manner and Form as the same Tythes were of Right rendered and paid within Forty Years next before the making of that Act, or of Right or Custom ought to have been paid ; and that no Person should thenceforth take or carry away any such or the like Tythes, which had been accustomably rendered or paid within the said Forty Years, or of Right ought to have been paid in the Tythable Place or Places of the same before he had justly divided or laid out for the Tythes thereof, the 10th, or other Customary Part of the same or otherwise agreed for the same Tythes, with the Rector, Vicar, or other Owner, Proprietor or Farmer of the same Tythes, under the Penalty of *treble the Value* of what should be so taken or carried away as by the same Act, it may among other Things more fully appear. *And also whereas* he the foresaid T. after (since) the making of the said Act, *to wit*, on the 1st Day of *January*, in (*such a* Year of the King's Reign) and long before, was, and always since hitherto hath been, and still is Farmer of all and singular the Tythes of (Sheaf-Corn) Grain, Wood and Hay belonging to the Rector of C. in the said County of *Hertford*, lying within the Ward or Division thereof, commonly called or known by the Name of *W.* including such and such Parishes (or rather shewing the particular Boundaries.) *And also whereas* the the

the foresaid J. M. being a Subject of the Lord the now King, and a Freeman of *England*, on *such* a Day and Year of the said Lord the now King, was an Occupier of 200 Acres of Wood-Lands, commonly called C. Woods, with the Appurtenances lying and being in the Parish of C. &c. afore said, of which said 200 Acres of Wood-Land, the Tythes of Wood and Under-wood, with the Tops and Lopps of the Trees, (commonly called *Silva Cedua*) under Twenty Years Growth, in and upon the same Lands, standing, growing or renewing within Forty Years next before the making of the said Act, were accustomed, and ought of Right (*de Jure*) to be paid in their proper Kind and Species by the Occupier or Occupiers of the same Lands for the Time being to the said Rector of C. or to his Farmer or Deputy, or other Proprietor of that Rectory, or of the Tythes thereof, for the Time being; and he the said J. being Occupier of the said 200 Acres of Wood-Land, with the Appurtenances as afore said; and he the said T. being Farmer of the said Tythes in Manner as afore said, he the said J. afterwards, *to wit*, on the Third Day *January*, in the Year of the King, &c. afore said, did cut down the Wood, Under-wood, and Lop and Top the Trees standing, growing, &c. in and upon 50 Acres, being Part of the said 200 Acres of Wood-Lands, being *Silva Cedua*, and under the growth of Twenty Years; And also after the said cutting down of the said Under-wood, and topping and lopping of the said Trees, so standing, growing, increasing and renewing on the said 50 Acres as afore said, *to wit*, on the said third

Implied.

Of Wood and  
Trees lopp,  
&c. But  
Note; no  
Tythes of Wood  
is due of com-  
mon Right,  
Carth. 393,  
&c. *ibid*.

Cause of Action,  
not setting  
forth the  
Tythes.

*Implied.* Third Day of January, in the Year aforesaid, at C. aforesaid, he the said J. did take and carry away and sell, or otherwise dispose of to his own Use and Benefit, without setting out the Tythes, or 10th Part of the Wood and Under-wood so cut, lopt and topt for the Use of the said Rector (as of Right he the said J. ought to have done) and without any Agreement or Satisfaction made by him the said J. with, or to the said T. for the Tythes of the said Wood, so cut, topp'd and lopp'd as aforesaid. Note; *this in the Original is laid over again, on three or four other Counts, too prolix to be here inserted; and then it concludes with an Averment of the Value of the Tythes, &c. thus:* And the same T. in Fact saith, That the Value of the Tythes of the said Wood and Under-wood so cut and topp'd and lopp'd as aforesaid, were at the Time of their cutting, topping and lopping, and of their being taken and carried away by the said J. as aforesaid, *to wit, such a Day and Year, at such a Place, &c.* aforesaid of the Value of 10 l. of lawful Money of Great Britain, and the like Averment for every Year the Tythes were not set forth, &c. (i.e. three Years) which said several Sums of Money do in the whole amount to 30 l. of like lawful Money, by Reason of which said Premisses, and by Force of the Statute aforesaid, an Action hath accrued (arisen) to the said T. to demand and have of the said J. the Sum of 90 l. *to wit, the treble Value of the said Tythes of the said Wood and Under-wood so cut, topp'd and lopp'd, and taken and carried away by the said J. he not having divided or set forth the Tythes thereof as aforesaid.*

*Averment of  
the Value.*

*And Notice.*

foresaid, whereof he the said J. had afterwards, to wit, such a Day and Year, at such a Place, Notice given him by the said T. yet he the said J. tho' oftentimes afterwards, to wit, at B. in the said County of H. thereto requested, hath not paid the said 90 l. to him the said T. but hath hitherto denied, refused, and still doth deny (refuse) to pay that (the same) to him, whereof he saith, That he is the worse, and hath Damage to 10 l. and thereof he brings his Suit.

Expressed.

Quære, if Notice is necessary?

*A Declaration for not paying small Tythes to the Vicar. (on an Agreement.)*

Cambridge to wit. **W**. P. late of W. in the County aforesaid, Innholder, was attached to answer to R. B. the younger, Clerk, of a Plea of Trespass upon the Case, and whereof the same R. by T. S. his Attorney Complains, That whereas he the same R. for Three Years (together) next before the 26th Day of March, in the 5th Year of the Reign of the Lord the now King, was, and yet is Vicar of the Vicarage and Parish Church of B. in the County aforesaid, and by Reason thereof, during the whole Time aforesaid, it hath belonged (appertained) and yet doth belong to him the said R. to have and take, or to permit some other Person or Persons to have and take all and singular the small Tythes belonging to the said Vicarage, arising, growing, or renewing within the same Time, in the said Parish of B. And whereas the foresaid W. on

In C. B.  
For small Tythes to the Vicar, Clitt. 69.

M

the

Expressed.

the said 26th Day of *March*, in the Year aforesaid, at *B.* aforesaid, was indebted to the said *R.* being then Vicar of the said Vicarage as aforesaid, in 32 *l.* of lawful Money of *England*, for certain small Tythes to the same Vicarage belonging, which by Permission of the said *R.* then and now the Vicar of, &c. as aforesaid, were by the said *W.* according to a certain Agreement before the said Day, had and made between them the said *R.* and *W.* taken and had to the proper Use of him the said *W.* and being so indebted he the said *W.* afterwards, *to wit*, on the same 26th Day of *March*, in the Year aforesaid, at *B.* aforesaid, in Consideration thereof, assumed, &c. *i. e.* to pay the said 32 *l.* &c. as before in other Assumpfits. And also whereas he the said *W.* (afterwards, *to wit*,) on the same 26th Day of *May*, in the 5th Year aforesaid, at *B.* aforesaid, in Consideration, That he the said *R.* the Vicar of the Vicarage aforesaid, had at the Special Instance and Request of him *W.* agreed with him *W.* that he the said *W.* should take and have certain other small Tythes belonging to the said Vicarage, and that he the same *W.* had according to that Agreement, taken and had the same Tythes (he the said *W.*) then and there did assume, &c. and unto the said *R.* well and faithfully promised, That he the said *W.* would well and faithfully pay to the said *R.* 16 *l.* of like lawful Money for the said last mentioned Tythes so taken and had as aforesaid (with a third Count, That in Consideration *R.* had on two Requests permitted *W.* to take and have certain other small Tythes belonging to the said Vicarage, *W.* promised to pay for them to *R.* as much as they were worth, and *R.* a-

Vide ante.

Assumpfit.

A Quantum  
valebant.

ver,

vers they were worth 16 l. of like lawful Money. *Expressed.*  
*See the Forms of Quantum valebants before)*  
 to wit, at B. aforesaid, whereof the said W.  
 had then and there Notice; yet he the said  
 W. not regarding his said several Promises  
 and Assumptions so made as aforesaid, but  
 contriving and fraudulently intending craftily,  
 &c. (as in other Assumpsits) See before.

*A Declaration on a Composition for Tythes.*

Suffolk to wit. J. W. in the County of Cam-  
 bridge, Yeoman, was at-  
 tached to answer to O. M. of a Plea of Tres-  
 pass on the Case, and whereof the same O. by  
 A. B. his Attorney, complains, That where-  
 as he the same O. was on the third Day of  
 May, in the Year of the Lord 1730, lawfully  
 possessed of, and in the Rectory impropriate  
 of the Parish Church of Eyming in the said  
 County of S. for the Term of four Years and  
 more, then next following, by Virtue of a  
 certain Demise before that Time made there-  
 of in Writing by the Dean and Chapter of the  
 Cathedral Church of Canterbury. And where-  
 as he the said J. on the same third Day of  
 May, in the Year of the Lord 1730, aforesaid,  
 was lawfully possessed of 20 Acres of Arable  
 Land, lying within the Parish, and the  
 Bounds, Limits and Tythable Places of the  
 same Parish; and whereas on the same Day  
 and Year, it was at Eyming aforesaid, agreed  
 between the same O. and the said J. That he  
 the said J. should retain and take, and have to  
 his own proper Use all and singular the Tythes  
 whatsoever, which within three Years thence

In C. B.  
 On a Compo-  
 sition for  
 Tythes, ibid.  
 70.

**Expressed.**

**Mutual Con-  
tract.**

next following should grow, arise, come or renew in and upon the said 20 Acres of Arable Land with their Appurtenances; and that he the same J. should yearly and every Year during the same three Years, pay Fifteenpence for every Acre of the said twenty Acres of Land (with their Appurtenances) in the Name and Stead, and in full Satisfaction and Discharge of all and singular the Tythes whatsoever, which should within that Time grow, arise, come or renew in and upon the same Lands, and that the said O. should take upon himself, and Discharge the whole Burthen, called Town-Charge, for those Lands during the said three Years; and he the same J. afterwards, *to wit*, on the same third Day of May, in the Year of the Lord 1730, above-said, in Consideration that the foresaid O. had at the Special Instance and Request of him J. taken upon himself, and unto the same J. then and there faithfully promised to perform the said Agreement in all Things on his Part to be performed, assumed upon himself, and unto the same O. then and there faithfully promised, That he the said J. would well and truly perform the same Agreement in all Things on his Part to be perform'd. *And also whereas* he the foresaid J. afterwards, *to wit*, the 26th Day of April, in the Year of the Lord 1731, at Eyming aforesaid, was indebted to him the said O. in 25 s. for other Tythes of Grain before that Time sold by the said O. to the said J. and by him the said J. by way of Retention before that Time had and received (being the Tythes growing, arising, coming, renewing, from, in and out of the said Lands of the said J. in Eyming aforesaid) and

and being so indebted, he the same J. in Consideration thereof, afterwards, *to wit*, on the Day and Year last abovesaid, at E. aforesaid, did assume upon himself, and unto the same O. then and there faithfully promised to pay the said 1 l. 5 s. on such a Day, i. e. *Mich.* *Averment.* in such a Year; and the said O. in Fact saith, That all and singular the Tythes of the Grain growing or arising from and of the foresaid twenty Acres within the first Year of the said three Years had and receiv'd by the said J. by Way of Retainer, according to the Agreement aforesaid, were due to the said O. at or upon such a Day (i. e. *Michaelmas* in such a Year) and that 1 l. 5 s. were then due to him the said O. for the same, according to the same Agreement; yet he the said J. not regarding his said several Promises and Assumptions so made as aforesaid, but contriving, &c. (*See in Assumpsits, ante.*)

Implied.

*The Entry of the Declaration and Pleadings in the Case of Tenant and Goldwin, for not Repairing a Partition-Wall, whereby the Plaintiff was prejudiced.*

*Pleas before the Lady the Queen at Westminster, of Trinity Term, in the third Year of the Reign of the Lady Anne, now Queen of England, &c. Rol. 211.*

*In B. R. Non-feasance. in a Partition Wall, &c. See 2 Salk. 766. ibid. 21, 360.*

*\* This Parenthesis is implied in the &c.*

*Middlesex to wit.* **I**T is to be remembered, That erewhile, *to wit*, in *Easter* Term last past, before the Lady the Queen, at *Westminster*, came *R. T.* by *J. R.* his Attorney, and brought into the Court of the said Lady the Queen, then, there his certain Bill against *L. G.* in Custody of the Marshal (\*of the *Marshalsea* of the said Lady the Queen, before the Queen herself) of a Plea of Trespass on the Case, and there are Pledges of the Prosecution, *to wit*, *John Doe* and *Richard Roe*, which said Bill follows in these Words, *to wit*, *Middlesex to wit*, *R. T.* complains of *L. G.* in Custody of the Marshal of the *Marshalsea* of the Lady the Queen, &c. for that, *to wit*, That whereas he the said *R.* on the first of *October*, in the first Year of the Reign of the Lady *Anne*, now Queen of *England*, and always from thence hitherto hath been, and still (yet) is possessed of a Messuage or House, situate, lying and being

**Implied.**

in *Friar-street*, in the Parish of *St. Anne*, within the Liberty of *Westminster*, in the foresaid County of *Middlesex*, for a certain Term of Years not yet ended, and in a Cellar, Parcel of his said Messuage, hath used (and been accustomed) to lay up and keep Coals and Ale for the Use of his Family, and for Sale to divers Persons, who were wont and accustomed to buy the said Commodities of the same *R.* in his Messuage or House aforesaid; to his the said *R.*'s no small Gain and Profit, which said Cellar lies contiguous, and during the whole Time aforesaid, hath lain contiguous to a certain Messuage of the foresaid *L.* in the Parish aforesaid, and been used to be kept and separated from a Draught-Vault, Parcel of the said Messuage of the said *L.* by a thick and close, compacted (cemented) Wall belonging to said Messuage of the said *L.* and which, during the (whole) Time aforesaid, ought of Right to have been repaired by the said *L.* Yet he the said *L.* being not ignorant of the Premises, but contriving and fraudulently intending to grieve and prejudice the said *R.* unjustly in this particular, and wholly to deprive the said *R.* of and from the Use and Benefit of the said Cellar of his said Messuage, and to hinder him of the Profit of his Trade (Business) aforesaid, on the said first Day of *October*, in the same Year of the Reign of the Lady the now Queen, as abovesaid, and from thence always hithereto (altho' he the said *R.* hath oftentimes, to wit, on the said first Day of *October*, in the Parish aforesaid, requested the said *L.* to repair the same) hath so negligently kept and repaired the said Wall, that for Default of due Repa-

*Averment of Usage.*

*Breach.*

*Implied.*

*Damage.*

*Imparla, &c.*

*Judgment by  
Nil dicit.*

*Inquiry A-  
warded.*

ration and Amendment of the same Wall, the Dung and Filths, Nastinesses in the said Draught-Vault, did issue and flow from the same Draught-Vault, thro' the Clefts, Crannies, Chinks of the said Wall into the said Cellar of the said R. and thereby over-flow'd the same Cellar, and rendered it unfit for the Trade (Business) of him the said R. during the Time aforesaid, whereby he the said R. during the said Time, *to wit*, in the Parish aforesaid, was much prejudiced, and totally lost the Use of his said Cellar, whereof he the said R. saith, That he is the worse, and hath Damage to the Value of 100 l. and thereof he brings his Suit, &c.

And now at this Day, *to wit*, on *Wednesday* next after the Morrow of Holy Trinity in this same Term, until which Day the foresaid L. had License of imparling to the Bill aforesaid, and then to answer thereto came the foresaid R. by his said Attorney, and prays, that the said L. may answer to his Declaration aforesaid, and he the said L. altho' he was solemnly demanded at the same Day, doth not come (appear) nor saith any Thing in Bar or Preclusion of the said Action of the foresaid R. whereby he the said R. remains thereof against him undefended; for which (by Reason whereof) the foresaid R. ought to recover his Damages against the said L. But because it is unknown to the Court of the said Lady the Queen, now here, before the Queen herself, what Damages the said R. hath by occasion of the Premises sustained in this particular: Therefore it is commanded to the Sheriff, That he diligently Inquire

Implied.

Inquire by the Oath of honest (good) and lawful Men of his Bailiwick, what Damages the said R. hath sustained as well by Occasion of the Premisses, as for his Charges and Costs laid out by him about his Suit in this Particular, and that the Inquisition, which he shall take thereof, he send (transmit) to the said Lady the Queen, at *Westminster*, on *Monday* next after three Weeks of *St. Michael*, under his Seal, and the Seals of those by whom he shall have taken that Inquisition, together with the Queen's Writ thereof to him directed; the same Day is given to the said R. to be there.

*A Declaration by the Present Mayor against a late Mayor, &c. for not delivering up the Insignia, on the Expiration of his Office (reciting a Mandamus, &c.)*

*Middlesex to wit.* J. B. Gent. Mayor of the City of *Coventry*, complains of T. P. late Mayor of the said City of C. and E. O. pretended Mayor of the same City in Custody of the Marshal (&c. see above) For that, to wit, That whereas the said City of C. is an antient City, in which said City for many Years now last past there hath been, and yet is a Mayor of the same City. And also whereas the (*Insignia*) Ensigns of the Mayoralty of the said City, to wit, the Mace and the Sword, and also the Corporation Seal of the said City, together with the Keys of the Council House of the City aforesaid, do belong, and of Right appertain, and for (many) divers Years last past have belonged, and of Right appertained to the Place and Office

In B. R.  
Non-feasance  
in not delivering up the  
Ensigns of  
Mayoralty.  
Lilly 48, 49.

**Implied.**

Plaintiff e-  
lected Mayor,  
and entitled  
to the Infig-  
nia.

Which he re-  
quested the  
Defendants to  
deliver, and  
they refused.

Office of Mayor of the same City. *And al-  
so whereas* the foresaid *J. B.* on the 13th Day  
of *October*, in the third Year of the Reign  
of the Lord *George* the second, now King of  
*Great Britain*, was at the said City of *C.* in  
the County (for Common Council) of the  
same City, duly elected into the Place and  
Office of Mayor of the same City; and he  
the same *J. B.* was also on the first Day of  
*November*, in the third Year/aforsaid, in the  
Common Council of the same City, duly  
admitted into the Place and Office of Mayor  
of the said City for one whole Year thence  
next following; and by Reason thereof the  
said *Insignia* of the Mayoralty of the said  
City, *to wit*, the Mace and Sword of the said  
City, together with the Corporation Seal of  
the said City, and also the Keys of the Coun-  
cil House of the said City, do belong, and of  
Right appertain to him the said *J. B.* as  
Mayor of the said City, and ought during  
the whole Time of his Mayoralty to remain  
in his Custody; and also he the said *J. B.*  
on the said first Day of *November*, in the  
Year above, and often afterwards, did at the  
City of *C.* aforsaid, in the Common Council  
of the same City, request the foresaid *T. P.*  
and *E. O.* to deliver up to him the said *J. B.*  
the said Ensigns of Mayoralty of the said  
City, *to wit*, the Mace and Sword of the said  
City, and also the said Corporation Seal of  
the said City, and the Keys of the Council  
House of the same City; yet they the said  
*T. P.* and *E. O.* did then and there, and as  
yet do unduly and unjustly refuse to deli-  
ver up the said *Insignia* (Ensignes) of Mayo-  
ralty of the, said City, *to wit*, the said Mace,  
(&c.)

# On Non-tenances.

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*Implem.*

(*Ec. ante*) to the said J. B. To the no small Damage and Grievance of him J. B. And also whereas he the foresaid J. B. (in Order to obtain the Possession or) for obtaining of the foresaid Ensigns of the Mayoralty of the said City of *C. to wit*, the Mace, (*Ec. ante*) did afterwards, *to wit*, on the 27th Day of *November*, (in the said third Year of the Reign of the said Lord the now King, sue forth and prosecute out of the Court of the said Lord the now King, before the King himself, the same Court then being at *Westminster*, in the said County of *Middlesex*, a certain Writ of the said Lord the now King, of *Mandamus* (we Command) directed to the said T. P. late Mayor of the City aforesaid, and E. O. the pretended Mayor of the same City, by which said Writ the same Lord the now King, reciting, That whereas there then remained in the Custody of the foresaid T. P. and E. O. or one of them the (*Insignia*) Ensigns of the Mayoralty of the said City, *to wit*, the Mace and Sword, with the Corporation Seal of the same City, and also the Key of the Council House of the said City, belonging and appertaining to the Place and Office of Mayor of the same City. *And also whereas* the foresaid J. B. was duly elected into the said Place and Office of Mayor of the same City on the said 13th Day of *October* then last past, and was admitted into the said Place and Office on the said first Day of *November* then next following, for one whole Year from thence next following; to whom the said Ensigns of the Mayoralty, *to wit*, the Mace and Sword, (*Ec. supra*) do belong and appertain, and ought to remain in his

*A Mandamus sued out.*

*Mandamus recited.*

**Implied.**

Custody during the whole Time of his Mayoralty, and altho' the said *J. B.* the now Mayor had often requested the said *T. P.* and *E. O.* to deliver to him the said Insignia of the said City, *to wit*, the Mace and Sword, (*Ec. supra*) yet the said *T. P.* and *E. O.* and each of them had unjustly and unduly refused, and at that Time did refuse to deliver the said Ensigns, *to wit*, the said Mace and Sword (*Ec. supra*) unto the said *J. B.* in contempt of the said Lord the now King, and to the no small Damage and Grievance of him *J. B.* as from the Complaint of the same *J. B.* the said Lord the now King, had then received (was then informed.) Therefore the said Lord the now King, being willing that due and speedy Justice should be done to the said *J. B.* in that particular, as was just (it should) did by that Writ command the said *T. P.* and *E. O.* firmly injoyning them that immediately after the Reception of the said Writ of the said Lord the now King, they should deliver or cause to be delivered the said Ensigns of the Mayoralty of the said City, *to wit*, the Mace and Sword (*Ec. supra*) unto him the said *J. B.* or should signify to the said Lord the now King, the Cause to the contrary, least for default thereof, any further Complaint should thereof come to the said Lord the now King, against them the said *T. P.* and *E. O.* And how that Writ of the said Lord the now King should be executed, they should make certainly known to the said Lord the now King, at *Westminster*, on *Saturday* next after the *Oftaves* of *St. Hillary* by then Remitting (Returning) the said Writ to the said Lord the now King, which

Implied.

which said Writ was afterwards, and before the Return thereof, *to wit*, on the first Day of *December*, in the said third Year of the said Lord the now King, delivered to the said *T. P.* and *E. O.* to be executed in Form of Law, *to wit*, at *Westminster* aforesaid, in the said County of *Middlesex*; yet they the said *T. P.* and *E. O.* have not delivered, or caused to be delivered the said Ensigns of Mayoralty of the City aforesaid, *to wit*, the Mace and Sword (*Ec. supra*) or any, or either of them unto the said *J. B.* according to the Demand of the same Writ: But they the said *T. P.* and *E. O.* well knowing the Premises, and further contriving and falsely and maliciously intending very much to grieve (and injure) the said *J. B.* in this particular, and to deprive him of the Custody and Use of the foresaid Ensigns of the Mayoralty of the City aforesaid, *to wit*, of the Mace and Sword (*Ec. supra*) for and during the whole Time of his said Mayoralty, have at the Return of the said Writ, *to wit*, on the said *Saturday* next after the *Ostaves* of *St. Hillary*, in the said third Year of the said Lord the now King, falsely and maliciously returned to the said Lord the now King, into the Court of him the said Lord the now King, before the King himself, the same Court being then at *Westminster* aforesaid, in the said County of *Middlesex*, their answer to the said Writ in a certain Schedule annexed to the same Writ, by which said answer, so returned, they the said *T. P.* and *E. O.* have certified to the said Lord the now King, That the said *J. B.* was not elected into the Office or Place of Mayor of the said City of *C.*

False Return that the Plaintiff was not elected.

But one of the Defendants.

*Implied.*

*C.* as by the foresaid Writ, it was supposed and further, That the foresaid *E. O.* on the foresaid 13th Day of *October* then last past, was duly elected into the Place and Office of Mayor of the said City, and that he the said *E. O.* on the said first Day of *November*, in the Year aforesaid, was duly admitted into the said Office, for one whole Year then next following, and that by Reason thereof he the said *E. O.* being then Mayor of the City aforesaid, ought to have and keep the said Ensigns of the Mayoralty of the same City with the Corporation Seal and Keys of the Council House there for and during the whole Time of the foresaid Mayoralty of the said *E.* which was not then past, and that therefore they had not delivered, nor ought to deliver the same to the said *J. B.* as by the said Writ, and the Return of the same, in the said Court of the said Lord the now King before the King himself, at *Westminster* aforesaid, filed and remaining of Record may more fully appear; whereas in Truth and in Fact, he the foresaid *J. B.* was duly elected and admitted into the foresaid Place and Office of Mayor of the said City of *C.* as by the Writ aforesaid, was supposed; and whereas in Truth and in Fact, the foresaid *E. O.* was not duly elected or admitted into the Place and Office of Mayor of the City aforesaid, as by the Return aforesaid is above supposed: By Pretence of which said false Return so made as aforesaid, he the said *J. B.* was not only deprived of the Custody and Use of the foresaid Ensigns of Mayoralty of the City aforesaid, *to wit,* the Mace and Sword (*&c. supra*) and of his Remedy for obtaining

*Averment.*

ing of the same, but hath also (born and) expended great Sums of Money in suing out and prosecuting the foresaid Writ of *Mandamus*; and by that Occasion is many Ways the worse (prejudiced) To the Damage of him 200 l. and thereof he brings his Suit. *Sustinuit.*

*See another like Declaration, viz. for not delivering up Charter-Books with the Ensigns of Mayoralty, &c. for Banbury in Oxfordshire. Lilly's Entries p. 51.*

*And with this I shall conclude the Head of Non-feasances.*

*The next Head is of Declarations in Actions of the Case for Mal-feasances, which are properly called Trespasses on the Case, as they are distinguished from Trespasses vi & armis, and Arms, and therefore are generally laid without those Words, as in the following Precedents.*

*A Declaration in Trespass on the Case for keeping a Dog accustomed to bite Sheep, &c.*

*Northampton to wit. J. P. late of M. in the County afore- In C. B. For keeping a Dog accustomed to bite Sheep. Lilly's Entr. 29.*  
 said, was attached to answer to T. K. of a Plea of Trespass on the Case, &c. and whereof the same T. by A. B. his Attorney, complains, That whereas the afore- said J. P. on the 23d Day of April, in the Year of the Lord 1697, at M. afore- said, in the County afore- said, did knowingly keep and retain a certain Dog accustomed to bite Cattle; which said Dog, afterwards, to wit, the Day, and Year, and Place afore- said, being then the Dog

*Pal-  
fence.*

Dog of him the said *J.* did so grievously bite forty of his the said *T.*'s Sheep, then and there found, that thirty Sheep of the Price of 30 *l.* being Parcel of the said forty Sheep of him the said *T.* died, and the Residue of the same Sheep became much the worse, to the Damage of him *T.* 40 *l.* and thereof he brings his Suit.

*The like in B. R.*

*In B. R.  
Middlesex.*

**B.** *F.* complains of *R. W.* in the Custody of the Marshal, &c. for that, that is to say, whereas he the aforesaid *R.* did knowingly keep and retain (*such a Day, Year, and Place*) a certain Dog accustomed to bite Sheep; which said Dog, the Day and Year aforesaid, at *H.* aforesaid, the Sheep, that is to say, forty Ewes and twenty-five Weathers, of him the said *B.* did chase and bite, so that by the chasing and biting, twenty of the Ewe-Sheep, of the Sheep aforesaid, of the Price of 15 *l.* died, and fifteen of the Weathers aforesaid, of the Price of 10 *l.* died in like Manner: And the Residue of the aforesaid Ewe-Sheep being then great with young, did cast their Lambs Abortive; and the Residue of the Weather-Sheep were thereby very much the worse; and other Enormities he then and there did, to the Damage of him *B.* 50 *l.* and thereupon he brings his Suit.

*A De-*

*A Declaration and Pleadings in Trespass on the Case, for shooting the Plaintiff's Dog.*

**Essex to wit.** **A.** late of *Colchester* in the County aforesaid, Single man, was attached to answer to *R. B.* of a Plea of Trespass on the Case; and whereof the same *R.* by *T. M.* his Attorney, complains, That whereas the aforesaid *A.* on the first Day of *April*, in the Second Year of the Reign of the Lord the now King, at *Colchester* aforesaid, in the County aforesaid, was possessed of a certain Spaniel Dog, of the Price (rather *Value* of) of 5*l.* as of the proper Goods of him *R.* whereof (whereby) he the said *R.* received much Commodity and Profit. Yet he the said *A.* being not ignorant of the Premises, but contriving and maliciously intending very much to grieve (hurt) and injure the same *R.* (unjustly) in this Particular; afterwards, *to wit*, on the said first Day of *April*, in the second Year aforesaid, at *Colchester* aforesaid, discharged a certain Gun, charged with Gunpowder and Lead (Shot) at and upon the said Spaniel Dog of him the said *R.* whereby the same Dog was so wounded, that he afterwards, *to wit*, on the same first Day of *April*, in the second Year aforesaid, at *Colchester* aforesaid, died, whereby he the said *R.* lost that Gain (Commodity) and Profit, which he usually received by the same Dog; and was thereby very much (the worse) prejudiced, and hath Damage to the Value of 10 *l.* and thereof he brings his Suit.

*In C. B.*  
*For shooting a*  
*Dog. Entr.*  
*Trin. 3 Geo.*  
*1 Rot. 368.*

**N**

**And**

**Malfeasance.**

*A special Plea that the Plaintiff was not qualified, &c.*

And the aforesaid *A.* by *M. R.* his Attorney, comes and defends the Force and Injury, when, where (*&c. vide ante*) and saith, That the aforesaid *R.* ought not to have his Action thereof against him, because he saith, That long before the aforesaid Time, wherein 'tis supposed the aforesaid Gun was discharged in and upon the aforesaid Dog, And also at the Time wherein 'tis supposed the aforesaid Gun was so discharged, one *James Smith*, Esq; was seised, and yet is seised in his Demeasn, as of Fee, of and in the Manor of *B.* with the Appurtenances, in the Parish of *B.* in the County aforesaid, and of and in an antient Park with Pales (impaled) situate and being within the said Manor and Parish of *B.* and also of and in five Acres of Pasture, with the Appurtenances situate and being within the said Manor and Parish of *B.* and contiguous, adjacent, and next adjoining to the said Park. And he the said *A.* further saith, That he the aforesaid *R.* at the said Time, wherein it is supposed that the said Gun was so discharged in and upon the said Dog, was and yet is incapable and unqualified by the Laws and Statutes of this Kingdom, to keep the Dog in the Declaration aforesaid mentioned. And that the Dog in the Declaration above mentioned, at the aforesaid Time, wherein it is supposed that the said Gun was discharged in and upon the same Dog, was the proper Dog of him *R.* and was then ranging and running about in the said five Acres of Pasture, contiguous, adjacent, and next adjoining to the aforesaid Park, and was doing Damage there. And because the said Dog was then and there so ranging and running about in the aforesaid

five Acres of Pasture, contiguous, adjacent, and next adjoining to the said Park, and was doing Damage there; he the said *A.* as the Servant of him the said *James Smith*, and by his Command, did endeavour to seize the said Dog to the proper Use of him the said *James Smith*. And because he the said *A.* could not seize the said Dog, he the said *A.* did then and there, in the aforesaid five Acres of Pasture, discharge the said Gun in and upon the said Dog, then so being, and doing Damage in the said five Acres as aforesaid, as was lawful for him to do, which is the same Gun discharged in and upon the same Dog, whereof the aforesaid *R.* doth now above complain, without that, that he the said *A.* discharged the said Gun in and upon the said Dog, at *Colchester* aforesaid, or elsewhere off from the said five Acres of Pasture, in *B.* aforesaid. And this he is ready to aver; whereof he prays Judgment, if the aforesaid *R.* ought to have his said Action thereof against him.

Mal-feazance.

Averment.

Traverse.

And the aforesaid *R.* saith, That for any Thing in the same Plea before alledged, he ought not to be precluded (barred) from having his said Action thereof against him the said *A.* because by protesting (not acknowledging) that he knows not any Thing in the same Plea before alledged to be true; for Plea he the same *R.* saith, That he the said *A.* contriving and maliciously intending unjustly to grieve and injure the same *R.* in this Particular, did of his own proper Injury (Wrong) without any such Cause, as by the said *A.* is above alledged, on the said first Day of *April*, in the second Year aforesaid,

De Injuria sua propria.

*Malfeasance.*

discharge the said Gun so charged with Gunpowder, Lead, and Shot, as aforesaid, in and upon the said Spaniel Dog of the said *R.* by which the said Dog was so wounded, that afterwards, *to wit*, on the same first Day of *April*, in the second Year aforesaid the said Dog died. And this he is ready to aver; wherefore and for that he the said *A.* above acknowledges (confesseth) the said Discharge of the said Gun, in and upon the said Dog (as above is declared) he the said *R.* prays Judgment and his Damages by Occasion of the Premisses to be adjudged to him in that Particular.

*Demurrer thereto.*

And the aforesaid *A.* faith, That the Plea of the aforesaid *R.* above by replying, pleaded, and the Matter in the same contained are not sufficient in Law for him the said *R.* to have his said Action to be maintained against him the said *A.* And that he hath no Need, nor is he bound by the Law of the Land, to answer to the said Plea, so by replying pleaded in the Manner and Form aforesaid; wherefore for Default of a sufficient Replication in this Particular, he the said *A.* prays Judgment, and that the aforesaid *R.* may be precluded (barred) from having his said Action thereof against him; and (therefore the said *A.* demurs in Law.) And for Cause of his Demurrer in Law in this Particular, he the said *A.* shews, and to the Court here demonstrates these following Causes, *to wit*, That the said Replication of the said *R.* doth not confess or avoid Traverse, or deny any Particular Matter alledged in the said Plea of him the said *A.* above pleaded in Bar, as it ought

*Causes of Demurrer.*

ought to have done; and that the said Traverse by him the said R. above by replying pleaded, is ill, uncertain, too general, and insufficient in Law, and puts the whole Matter aforesaid of him A. in Issue, whereas the said R. ought to have traversed, or put in Issue some certain particular Matter by him the said A. above pleaded in Bar. And that the same Replication is ill concluded, in that it doth not conclude to the Country as it ought. And also that the same Replication is multiplex and defective.

Malfeasance.

*The Defendant joins in Demurrer as usual; Joinder.  
and upon Monday the 25th of November 1717,  
Judgment was given for the Plaintiff Nisi Causa,  
on the Wednesday following, and then absolute,  
as I am informed. Sed Quere? For I think the  
Defendants Plea good.*

*A Declaration in Case, for stopping up of  
Lights.*

Middlesex to wit. **N**. R. complains of S. P. and R. A. in Custody of the Marshal, &c. of that, That whereas he the aforesaid N. on the first Day of June, in the ninth Year of the Reign of the Lord William the Third, now King of England, &c. and continually from that Time hitherto hath been and now (yet) is possessed of and in a Messuage situate and being in the Parish of St. Martins in the Fields, in the said County of Middlesex, and for the Term of divers Years then and yet to come and to endure. And of twenty one Windows in and upon the South Side, and eight Windows in

*In B. R.  
For stopping  
up of Lights.  
Hill. 9 W. 3.  
Rol. 362.  
See Lilly's  
Entr. p. 81.*

Mal-fea-  
zance.

Note, The  
better Way is  
to set forth  
both the Mes-  
suage, and the  
Lights to have  
been antient,  
&c. Salk. 460.  
714. 6 Mod.  
1 Mod. 116.  
Prac. Reg.  
16. 29.

and upon the East Side of the aforesaid Mes-  
suage, in (by) and thro' which said Windows  
the Light, on the said first Day of *June*, in  
the ninth Year of the aforesaid, enter'd and  
was convey'd, and (from Time out of Mind,  
&c.) had used to be convey'd, and then and  
yet ought to enter and be convey'd for the  
illuminating (enlightening) of the same Mes-  
suage. Yet they the said *S. P.* and *R. A.*  
being not ignorant of the Premisses, but ma-  
liciously intending and contriving to deprive  
and hinder him the said *N. R.* from the Use  
and Benefit of the said several Windows, af-  
terwards, *to wit*, on the same first Day of  
*June*, in the said ninth Year of the said Lord  
the now King, at the said Parish of *St. Mar-  
tins in the Fields*, in the County aforesaid, did  
build and erect a certain Edifice near the  
aforesaid Windows, in the South and East  
Sides of the aforesaid Messuage of him the  
said *N. R.* and continued the same Erection  
and Building from that Time until the first  
Day of *October* then next following, whereby  
the said Windows in the said Messuage of the  
said *N.* were during the Time aforesaid, so  
obstructed and darkened, that he the said *N.*  
wholly lost and was deprived of the Benefit  
and Commodity of the said Windows, from  
the said first Day of *June*, until the said first  
Day of *October* then next following, where-  
of he the said *N.* saith, That he is the  
worse, and hath Damage to the Value of  
100 *l.* &c.

To this Declaration the Defendant pleaded  
Not Guilty, and on that Issue the Verdict and  
Judgment were for the Plaintiff. But Note, it  
was

not being said in the Declaration that the Messuage or the Windows were antient, it was moved in Arrest of Judgment; but by the whole Court it was held, that it being after a Verdict, it shall be intended, that it was given in Evidence at the Tryal, That the House and Windows were antient. And Serjeant Wright and Sir Edward Northy held that the Declaration would have been good, even upon a Demurrer (sed Q.) Salk.

Malfeasance.

But it seems this Judgment did not terminate the Dispute; for in Trin. 11 W. 3. there is another Declaration by the same Plaintiff for continuing the stopping of the same Lights, viz.

Middlesex to wit. **N.** R. complains of *S. P.* in Custody, &c. for that, to wit, That whereas he the aforesaid *N.* on the second Day of *October*, in the ninth Year of the Reign (*&c. supra* to) possessed of and in a certain antient Messuage situate (*&c. supra* to) in (by) and thro' which said Windows the Light did freely enter, and was convey'd at the Time of erecting, and (long Time) before the Erection of a certain Edifice (Building) hereafter mentioned, and so of Right enter'd, and still ought of Right to enter for the Illumination (enlightening) of the said Messuage of him the said *N.* Yet he the said *S.* being not ignorant of the Premises, but maliciously intending (*&c. as before* to) afterwards, on the said 2d Day of *October*, in the said ninth Year, *&c.* and from the same second Day of *October*, in that Year, until the 20th Day of *October*, in the tenth Year of the Reign of the said Lord the now King, at the said Parish of *St. Martins in the*  
N 4 Fields,

In B. R.  
For continuing  
the stopping up  
of the Lights  
*supra.*  
See Lilly, 82.

1st Count.

Mal-  
se-  
fance.

2<sup>d</sup> Count.

*Fields*, in the County aforesaid, did continue a certain Edifice or Building before that Time, *to wit*, on the first Day of *June*, in the ninth Year aforesaid, erected by him the said *S.* to the Nufance (Annoyance) of the said Messuage then, and yet of the said *N.* so near the aforesaid several Windows of him *N.* that the Lights of the said Windows were thereby obstructed and (darkened) from the said second Day of *October*, in the said ninth Year, until the 20th Day of *October*, in the tenth Year aforesaid, whereby he the said *N.* lost and was deprived of the Commodity and Benefit of the same Windows from the said second Day of *October*, in the ninth Year aforesaid, until the said 20th Day of *October*, in the 10th Year aforesaid. And whereas he the aforesaid *N.* was on the said second Day of *October*, in the ninth Year aforesaid; and continually from that Time hitherto hath been possessed, and now is possessed of, and in a certain antient Messuage situate and being (&c. as the first Declaration to) the East Side of the foresaid antient Messuage, in and thro' which said Windows, the Light, before the Erection and Time of erecting of the other Edifice hereunder mentioned, did of Right enter, and was convey'd; and still of Right ought to enter, and be convey'd for the Illumination (enlightening) of the said antient Messuage of the said *N.* Yet he the said *S.* being not ignorant of the Premisses, but maliciously intending and contriving to deprive and hinder the said *N.* from the Use and Benefit (Commodity or Conveniency) of the same several antient Windows last mentioned, afterwards, *to wit*, on the same  
second

second Day of *October*, in the said ninth Year of the Reign of the said Lord the now King. And from the same second Day of *October*, in that Year, until the said 20th Day of *October*, in the tenth Year of the Reign of the same Lord the now King, at the aforesaid Parish of *St. Martins in the Fields*, in the County aforesaid, did continue (hath continued) a certain other Edifice or Building by him the said S. before erected, *to wit*, on the first Day of *June*, in the ninth Year above-said, to the Nuisance (Annoyance) of the aforesaid Messuage then, and yet of him the said N. so near the said several last mentioned *antient Windows* of him N. that the said last mentioned *antient Windows* became thereby obstructed and darkened, whereby he the said N. lost and was deprived of the Commodity and Benefit of the same Windows, from the aforesaid second Day of *October*, in the ninth Year aforesaid, until the 20th Day of *October*, in the tenth Year above-said, whereof he the said N. saith, that he is the worse, and hath Damage to the Value of 40 l. &c.

Note, *To the first Count in the above Declaration the Defendant demurred, it not being said the Lights were antient Lights. And to the second Count pleaded Not Guilty, and Verdict for the Plaintiff. But the Postea was stayed in the Judges Hands by the Rule infra; yet afterwards the Plaintiff had his Judgment, which was affirmed on a Writ of Error in the Exchequer Chamber.*

N. Rose.

## Declarations, &amp;c.

N. Rosewell *against* S. Prior.

*Middlesex* to wit. **A**T the Session held at *Westminster* in the Great Hall of Pleas, in the County aforesaid, on *Thursday* the 29th Day of *June*, in the 11th Year of the Reign of the Lord *William* the Third now King of *England*, before *J. Holt*, Knt. Chief Justice of the same Lord the King, assigned for Pleas to be held before the King himself.

**I**T is ordered by the Consent of the Parties, their Council and Attorneys, That the *Posse* shall remain in the Hands of the said Chief Justice (in Order) to have his Judgment thereof, whether the Action upon which the Issue is joined between the Parties aforesaid, be maintainable in Law against the said Defendant or Not; he the said Defendant during the whole Time of the Continuance of the Erection of the Edifice in the said Action mentioned, not being the Occupier of that Edifice. And 'tis further ordered by the Assent aforesaid, That this Order be made a Rule of the same Court of the said Lord the King, before the King himself, if it shall please the same Court.

A De-

Mal-fea-  
zance.

*A Declaration for diverting an antient Water-course, so that the Plaintiff lost the Benefit of his Mill.*

Southampton to wit. **M.** L. complains of **M. G. S.** in Custody, *In B. R. For diverting a Water-course, &c. See Lilly's Entr. 55.*  
*Ec.* For that, to wit, that whereas he the said **M.** was on the first Day of *January* (in such a Year of the King's Reign) seised in his Demesne as of Fee of certain Water-Mills, called **S. Mills**, otherwise **K. Mills**, with a Parcel of Moor or Meadow Land, containing by Estimation three Acres, or thereabout, near adjoining to the said Mill, with the Appurtenances in **A.** in the County aforesaid; and that the said **M. L.** and all those whose Estate the same **M.** hath in the said Mill, and Parcel of Moor or Meadow Land, have had and ought to have, and from the Time whereof the Memory of Men, is not to the Contrary, have been accustomed and ought to have the Benefit of a certain Water or Water-course, which issues from a Spring near to, and encreases a certain Water-course or Rivulet which runs from a certain (Mill in **A.** aforesaid) to the said Mills, called **S. Mills**, otherwise **K. Mills**. But he the said **J. S.** being not ignorant of the Premises, but maliciously contriving and fraudulently intending wholly to deprive the said **M.** of the Profit and Commodity of his said Mills, and of the said Parcel of Moor or Meadow, did on the 11th Day of *September*, in such a Year of the Reign of the Lord the now King, at **A.** afore-

Note,  
Corn-Mills.

Malfeasance.

*A.* afore said, cut the Bank or Inclosure of the Water or Water-course afore said, which issues from the said neighbouring Spring, and encreases the said Water-course or Rivulet, which runs from the said Mill in *A.* afore said, to the said Mills, called *S.* Mills, otherwise *K.* Mills, and did then and there so far break down and destroy, or cause to be broken down and destroyed the said Bank or Inclosure, and did so divert, and turned, or caused the Water there running to be so turned and diverted, that by Reason of the said cutting and breaking down of the said Bank and Inclosure, and turning and diverting of the said Water, the said Mills, called, &c. could not for want of the said Water so turned and diverted from its said ancient Course, grind or work so well and commodiously as they did before; and also the said Parcel of Moor or Meadow Land, was very much over-flowed and drowned, whereby he the said *M.* lost and was deprived of a great Part of the Profits of the said Mill, and of the said Moor or Meadow for a long Time afterwards, *to wit*, from *such* a Time, untill *such* a Time, whereof he saith, That he is the worse, and hath Damage to 100 *l.* &c.

The

*The like against an Attorney of C. B. prosecuted there by Bill.*

Norfolk to wit.

**W**Hereas *H. B. Knt.* hath lately in the Court before the Justices of the Common Pleas, at *Westminster* exhibited against *E. J.* one of the Attorneys of the said Court of Common Pleas, his certain Bill — For that he the said *H.* on the 20th Day of *May*, in the, *6<sup>th</sup>* Year of the Lord the now *K.* and long before, and continually afterwards hitherto was, and as yet is seised of one Water-Mill (rather Corn-Mill) and 10 Acres of Meadow, with the Appurtenances in *O.* in the County aforesaid, near adjoining to a certain River (Rivulet) there. *And also whereas* the Water of the same River (Rivulet) from the Time whereof the Memory of Man is not to the contrary, hath used to run by a right and due Course unto the said Mill; yet he the said *E.* maliciously contriving and intending wholly to deprive the said *H.* as well of the Use, Profit and Commodity of his said Mill, as of the foresaid 10 Acres of Meadow on the said 20th Day of *May*, in the sixth Year aforesaid, and continually afterwards, by the Space of one and thirty Days then next following, did obstruct and hinder the ancient Course of the Water of the said River at *O.* aforesaid, with a certain Sluice there (lately erected) on the East-side of the said River, between the said Mill and the said 10 Acres of Meadow; by Reason of which said Obstruction, that same Mill for defect (want) of the Water
 

*In C. B. The like against an Attorney. See Hern. 133.*

**Malfeasance.**

ter of the said River could not grind or Work during the Time aforesaid, and also the Water of the same River, over-whelming the Banks thereof, towards the said 10 Acres of Meadow, wholly over-flowed the same 10 Acres of Meadow, whereby he the said *H.* lost and was deprived of the Profit and Commodity, as well of his said Mill, as of the said 10 Acres of Meadow for a long Time, *to wit*, from the said 20th Day of *May*, in the sixth Year aforesaid, unto the one and twentieth Day of *June* then next following, whereby he saith, That he is the worse, and hath Damage to the Value of 40*l.* &c.

*A Declaration against two Defendants, for stopping of a Way to the Plaintiff's Close.*

*In C. B.  
For Stopping  
a Way to a  
Close, &c.  
See Lilly 72.  
2 Salk. 728.*

*Northampton to wit.* **J. A.** the Elder, late of **J. L.** in the County aforesaid, Yeoman, and **J. L.** the Younger, late of **L.** aforesaid, Yeoman, were attached to answer to **W. L.** Gentleman, of a Plea of Trespass on the Case, and whereof he the same **W.** by **J. U.** his Attorney complains, That whereas the foresaid **W.** on the first Day of *May*, in the sixth Year of the Reign of the Lord *George* the Second, now King of *Great Britain*, was seised in his Demeasns as of Fee, of and in one Close of Pasture, called the *C.* in **L.** aforesaid, in the said County of **N.** and that he the said **W.** on the said first Day of *May*, and continually afterwards, until such a Day in the Year aforesaid, *had and ought*

ought to have for himself, and his Servants at all Times, in the Year at his Will and Pleasure, a certain Way as well on Foot as on Horse-back, in, over, through, and beyond a certain Close, called the *B.* in *L.* aforesaid, from a certain Highway in *L.* aforesaid, called *L. Street*, to the Close of him the said *W.* there called the *C.* aforesaid, and so backward in, through, and over the said Close, called the *B.* for driving and passing the Cattle of him *W.* and to carry and re-carry with his Carts and Carriages (Wains) as belonging and appertaining to his said Close; yet they the aforesaid *J.* and *J.* contriving and intending unjustly to grieve and wrong the said *W.* and to hinder and deprive him of his said Way on the said first Day of *May*, in the said sixth Year, at *L.* aforesaid, in the said County of *N.* did digg, erect, make and continue a certain Ditch and Hedge, Cross, a (thwart, or travers) the said Way of the said *W.* in the Close aforesaid, called the *B.* leading to the Close of the said *W.* called the *C.* and also did so far obstruct and (preclude) barr the said Way, that he the said *W.* was wholly deprived and hindered from the Use of the said Way for a long Time, *to wit*, from the said first Day of *May*, in the said sixth Year, until the 21st Day of *May*, in the Seventh Year, &c. To the Damage of him the said *W.* 20*l.* &c.

*Malfeasance.*

*A Declaration in Case, for enticing and  
eloigning away the Plaintiff's Servant.*

In B. R.  
For enticing  
and eloigning  
his Servant.  
Lilly's Entr.  
72.

Middlesex to wit. J. S. of, &c. complains of  
J. T. G. in Custody of the  
Marshal of the *Marshalsea* of the Lord the  
now King, in the Court of the said Lord the  
now King, before the King himself; For  
that, *to wit*, That whereas one *A. B.* on *such*  
a Day in *such* a Year, at *such* a Place, being  
rightly (duly) and lawfully retained in the  
Service of him the said J. S. to serve him  
the said J. S. as a Footman, or as a menial  
Servant, &c. for the Term or Space of one  
whole Year then next following, fully to be  
compleat and ended; and he the said *A. B.*  
having served the said J. S. in the said Capa-  
city (Service) of a Footman, &c. for the  
Space of six Months, from and after the said  
first Day of *May*, in the Year aforesaid,  
whereby he the said J. S. had and received  
great Profit, or very considerable Benefit and  
Advantage in his Affairs, by Reason (Means)  
of the Service of the said *A.* yet he the said  
T. G. being not ignorant of the Premisses,  
but contriving and fraudulently intending to  
deprive him the said J. S. of the Service of  
his said Servant, and of all the Advantages  
Gain and Benefit which he the said J. S. had  
or should have, or Gain by Reason of the  
Service of his said Servant, did craftily and  
subtily persuade and procure the said *A. B.*  
being so retained a menial Servant by the  
said J. S. as aforesaid, to eloigne himself  
from, and wholly to leave the said Service of  
him

him the said J. S. against the Will of the said J. S. whereby he the said J. S. did totally (wholly) lose, and was deprived of the Service of the said A. B. for a long Time, *to wit*, for the Space of six Months, *to wit*, from *such a Day*, till *such Day*, in *such a Year*, &c.) To the Damage of him the said J. S. 20 *l*. and thereof he brings his Suit.

*A Declaration for hindring the Plaintiffs in Receiving the Tolls, &c. of their Market.*

Gloucester to wit. **T.** S. Esq; and R. B. Esq; complain of J. W. S. B. and J. B. in Custody, &c. (See before) For that, *to wit*, That whereas they the said T. and R. on the 29th Day of October, in the first Year of the Reign of the Lord George the Second, now King, &c. and continually afterwards, until the Day of the exhibiting of this Bill, *to wit*, on the 20th Day of April, in the third Year of the said Lord the now King, were, and yet are seised as of Fee and of Right, of and in a certain Market held and kept, and to be held and kept in every Week upon Thursday in and at *such a Place* in the County aforesaid, for divers Merchandizes, Wares, Goods and Chattels to be there bought and sold; and also among other Things of and in the Liberty and Franchise of having and keeping the Publick (Beam) Ballances and Weights, and of publickly using the same there; by Reason of which said Market and Franchises, they the said T. and R. for and during the Time aforesaid, were lawfully entitled (and accustomed) to have and re-

In B. R.  
For hindering  
one in the  
Profit of his  
Market.  
Lilly 63.

## Declarations, &amp;c.

ceive, as belonging to the same Market, the divers Tolls of Stallage, Piccage, Wayage, Pitching-pence, and other Profits of the several Persons coming to the said Market, and there buying and selling (the said Merchandizes, &c.) yet they the said *J. W. S. B.* and *J. B.* being not ignorant of the Premisses, but maliciously intending and contriving to grieve and injure them the said *T. S.* and *R. B.* in the said Premisses, and also (wholly) to exclude and deprive them of and from the Frachises and Profits of their said Market, and particularly of and from the Profit of taking and receiving of the foresaid Pitching-pence, and other Profits of the said Publick Beam (Ballances) and Weights in the same Market, they the said *J. W. S. B.* and *J. B.* on the foresaid 9th Day of *October*, in the said third Year of the now King, and at divers other Days and Times in (during) the Time of the said Market, between the 9th Day of *October*, in the foresaid first Year of the Reign of the said Lord the now King, and the said Time of the exhibiting of this Bill, did at *C.* aforesaid, of their own proper Injury, without any lawful or legal Authority, maliciously and unjustly enter into the Market aforesaid, and then and there unjustly collected and received, (and converted) or caused to be collected and received, and converted to their own proper Use, the foresaid Toll, called Pitching-pence, and the said Profits of the (Beam) Ballances and Weights, whereby they the said *T. S.* and *R.* for and during the whole Time aforesaid, lost and were deprived of the foresaid Toll, called Pitching-Pence, and of the said Profits  
of

of the (Beam) &c. To the Damage of them the said T. S. and R. B. 200 l. &c.

Pal-  
sance.

Note; herein on the Issue not Guilty at a Trial at Bar, the Plaintiffs had a Verdict, and thereon a Judgment.

*A Declaration for erecting a new Fair to the Prejudice of the Plaintiff's Fair by Prescription.*

Southampton to wit. J. P. late of L. in the County afore-  
said, Yeoman, and N. E. late of, &c. were attached to answer to J. T. Esq; and J. S. Gent. of a Plea of Trespas upon the Case, and whereof they the said J. T. and J. S. by J. C. their Attorney complain, That whereas the Dean and Chapter of the Cathedral Church of the Holy Trinity, at Winchester in the County afore-  
said, were lately seised of (and in) a certain Close of Pasture, called the S. with the Appurtenances, in the Parish of S. and County afore-  
said, on the North Part (Side) of the King's Highway there, and lying next and contiguous to the same Way in their Demeasn as of Fee in Right of their said Church. And whereas one S. T. Gent. had been (was) also lately seised of another Close of Meadow or Pasture, with the Appurtenances, called C. Close, on the South Part (Side) of the said King's Highway, and lying next and contiguous to the same in his Demeasn as of Fee, and they the said Dean and Chapter, and the said S. T. and all those whose Estate they respectively have in the said Closes, with the Appurtenances, from the

In C. B.  
For erecting a  
Fair to the  
Prejudice of  
the Plaintiff's  
Fair. See  
Lilly 30.

Mal-  
seal-  
lance.

Time whereof the Memory of Man is not to the contrary, have had and held, and been used and accustomed to have and hold in and upon the same, their said Close, yearly, and every Year on every sixth Day of November, if it was not Sunday, and if it was, then on the Morrow of the same Sunday, a certain Fair for the buying and selling of divers Kinds of Goods, Wares and Merchandizes (*or of divers kinds of Cattle, to wit, Horses, Oxen, &c.*) *or, as it is there (for Sheep)* to be there bought and sold, together with the Tolls of Stallage of the Sheep-Penns and of Piccage there, and all other the Profits, Commodities and Emoluments whatsoever to the same Fair incident, belonging or appertaining, *to wit, the Toll, Stallage and Piccage, and the Profits of the same severally and respectively, for such Sheep as were sold or expos'd to Sale in or upon their said several Closes respectively.* And also whereas he the said *J. T.* now is, and for divers Years now last past hath been lawfully possessed of the said Close of the foresaid Dean and Chapter, and of their Purparty of the foresaid Fair, with its Appurtenances, as their Farmer or Under-tenant thereof, for a Term of Years not yet past: And whereas the said *J. S.* now is, and for divers Years now last past, hath also been lawfully possessed of the said other Close of the foresaid *S. T.* and of his (Share) Purparty of the said Fair, with the Appurtenances in like Manner as his Farmer and Under-tenant of the same; and that therefore they the said *J. T.* and *J. S.* for and during that whole Time aforesaid, have had and received, or ought to have and receive

receive the whole Profit of the same Fair, between them respectively as aforesaid, yet they the said J. P. N. E. &c. well enough knowing the Premises, but contriving and fraudulently intending unjustly to grieve and injure them the said J. T. and J. S. and to hinder and deprive them of, and in (the Perception of) the Toll and Profits of the same Fair, have lately, and some few Days before the said Fair was and ought to be held in and upon the said Close in Manner as aforesaid, raised and erected without any legal Warrant or Authority whatsoever, a certain new and other Fair to be held yearly for Sheep, at the Parish of H. in the County aforesaid, near the said Close where the said Fair of them the said J. T. and J. S. had been, and used of Right to be held as aforesaid; and have unlawfully and injuriously kept and held the same new Fair, *to wit, (showing the Time and Place)* and then and there have taken, had and received divers and considerable Sums of Money for Tolls, Stallage, &c. to the Hurt and Prejudice and grievous Nuisance of the said ancient Fair of them the said J. T. and J. S. whereby they the said J. T. and J. S. have lost and been deprived of their said rightful Profits of Toll, Stallage, Piccage, and other Emoluments, which of Right they would otherwise have taken and received from their said ancient Fair. To the Damage of them the said J. T. and J. S. 20 l. and thereof they bring their Suit.

Malfeasance.

*The Entry of a Declaration, Plea, &c.  
in Case, for stopping a Way to a  
Colliery.*

*Pleas before the Lord the King at Westminster, of Hillary Term, in the ninth Year of the Lord William the Third, now King of England. Roll the 437th.*

In B. R.  
For stopping a  
Way to a Col-  
liery. Hill.  
9 W. 3. Rot.  
437. See Salk.  
15. & 728.  
Setting forth,  
That he was  
possessed of a  
Term in a Col-  
liery adjoining  
to a Highway.

*Work to wit.* **I**T is to be remember'd, That e'er while, *to wit*, in the Term of St. Hillary last past, before the Lord the King at Westminster, came H. J. by E. B. his Attorney, and brought into the Court of the said Lord the King then there, his certain Bill against J. M. Esq; and R. his Wife, S. W. J. L. &c. in Custody of the Marshal of the Marshalsea, &c. (see before & infra) of a Plea of Trespass on the Case. And there are Pledges of the Prosecution, *to wit*, John Doe and Richard Roe, which said Bill follows in these Words, *to wit*, H. J. complains of J. M. and R. his Wife, S. W. J. L. &c. in Custody of the Marshal of the Marshalsea of the Court of the Lord the King, being before the King himself; for that, *to wit*, That whereas he the said H. J. was on the 14th Day of May, in the said ninth Year of the Reign of the Lord William the Third, now King of England, &c. and long before, and always afterwards hitherto, hath been possessed, and still is possessed for a certain Term of Years, then and yet to come and unexpired, of and in a certain

certain Colliery and Mine of Coals, being under the Soil and Earth (and in the Bowels) of a certain Close or Parcel of Land, situate and lying in the Parish of *W.* otherwise *Wb.* in the County aforesaid, call'd *W. Fields*, otherwise *Wb. Fields*, and near adjoining to a common King's Highway, in the Parish aforesaid, leading on the North Part, from the Town of *Wetherby*, in the County aforesaid, in, thro', and beyond a certain Moor there call'd *Win-Moor*, and from thence in, thro', and beyond a certain Street or Lane there call'd *Anlishaw-Lane*, and from thence in, thro, and beyond the said Town of *W.* otherwise *Wb.* and the like backward. And also of and in a certain other Colliery and Mine of Coals (*Quere* the Term) being under the Soil and Earth, and in the Bowels of a certain Close of Moor, or Parcel of Land, in the Parish aforesaid, call'd *Halton-Moor*, situate and lying, and in like Manner near adjoining to the King's common Highway aforesaid, leading on the North Part from the Town of *Wetherby* aforesaid, in, thro', and beyond the said Moor, call'd *Win-Moor*, and from thence in, thro', and beyond the said Street or Lane call'd *Anlishaw-Lane*, and from thence, in, thro', and beyond the Town of *H.* in the County aforesaid. And in like Manner backwards, in, thro' and beyond (or on this Side) the said Town and Street, or Lane aforesaid; in, thro', and beyond which said Street or Lane, call'd *A. Lane*, the Coals dug in, and got out of the Mines aforesaid, were used and accustomed to have been carried, convey'd, to the neighbouring and circumjacent Places (and Houses) upon all

Pal-  
seance.

And had a  
great Quanti-  
ty of Coals  
ready for Sale.

*Malfeasance.*

*But the Defendant to hinder the Buyers, stopped up the Way, &c. whereby he lost the Sale, &c.*

Occasions. And also whereas on the same 14th Day of May, he the said *H. J.* had a great Quantity, *to wit*, 200 Cart-loads (Chaldron) of Coals, dug and raised out of the Mines aforesaid, lying in the several Closes aforesaid, ready for and exposed to Sale, they the said *J. R. S. J. &c.* being not ignorant of the Premises, but contriving and fraudulently intending to hinder, deceive and defraud the said *H. J.* of and from the Use and Benefit of his said Colliery, and to seduce and withdraw the Buyers of Coals from buying or having the Coals of the said *H.* so ready for Sale, as aforesaid. And to draw and appropriate (engross) the said Buyers to the Colliery of the said *J. M.* near adjoining in the Parish aforesaid, did afterwards, *to wit*, on the said 14th Day of May, in the said ninth Year of the Reign of the said Lord the now King, put and place in the Way aforesaid, in the (Street) Lane aforesaid, in the Parish aforesaid, four Cart-loads of great Stones, and one large Root of a great Ashen Tree, and permitted and continued, or caused the same Stones and Root there to lye and continue for the Space of one whole Month, by which said Stones and Root, the aforesaid Way, in, thro', and beyond the Street aforesaid, was so far (much) barred (stopped) and obstructed, that the Carts and Carriages necessary for the carrying and conveying away of the said Coals, so dug and taken out of the said Mines of the said *J. H.* as aforesaid, could not pass or have any Way for passing in, thro', and beyond the said Street, call'd *Anliffaw-Lane*, as aforesaid; whereby he the said *H. J.* wholly lost and was

was deprived of the Benefit, Commodity, Profit, and Advantage of selling his said Coals, so dug in and drawn out of his said Colliery, for and during the whole Time aforesaid; and the said *H. J.* for Want of the Buyers so hindred (barred) and obstructed by the Causes aforesaid, became thereby greatly damnified and prejudiced, and received Loss to the Damage of him *H.* 50 *l.* and thereof he brings his Suit, &c.

*Mat-sea-  
sance.*

And now at this Day, to wit, *Monday* next after the Octaves of *St. Hillary*, in this same Term, until which Day the said *J. M.* and *R.* his Wife, *S. J. H. S.* &c. &c. had Licence of Imparling to the Bill aforesaid, and then to answer, &c. before the Lord the King at *Westminster*, came as well the said *H. J.* by his Attorney, as the said *J. M.* and *R.* his Wife, *S. J. H. S.* by *M. J.* their Attorney. And they the said *J. M. R. S. J. H. S.* &c. do defend the Force and Injury, when, where, &c. and say, that they are not guilty of the Premises above imposed (charged) upon them in Manner and Form as the said *H. J.* doth above complain (against them) and of this they put themselves on the Country, and the said *H. J.* in like Manner, &c. Therefore let a Jury come thereof before the Lord the King at *Westminster*, on *Saturday* next after the Octaves of the Purification of the blessed *Mary the Virgin*, and who are neither related to the Plaintiff or Defendants, to take Knowledge of the Matters in Issue between the said Parties, because as well the Plaintiff as the Defendants, between whom the Dispute (Controversy) thereof (now) is, have

*Impar lance.*

*Not Guilty  
pleaded.*

*Issue joined,  
and Venire  
awarded.*

*Pal sea-  
saunce.*

have put themselves upon that Jury. The same Day is given to the Parties (the Plaintiff and Defendants) aforesaid.

*Note.*

*See the Case upon this Record, in 1 Salk. 15, 16, 17. where it appears, That tho' a Verdict was for the Plaintiff; yet on a Motion in Arrest of Judgment, a Rule was made, That Judgment should be stay'd quo usque, &c. And the Court being afterwards equally divided, the Plaintiff could not have Judgment, because no Rule could be made to discharge the former Rule; Quere. And from the Argument in that Case, it seems the Court was divided on this Point, viz. whether it was sufficient for the Declaration supra, to alledge only in general, That Buyers or Customers could not come; or whether it ought not to set forth, especially that Customers were coming and were hinder'd. But suppose the Knowledge of the Obstruction was so general, that none attempted to come; I take it the Action lies without such Allegation in the Declaration.*

*A Declaration in Case for throwing down the Plaintiff's Enclosure, whereby the Cattle of others got into his Close, &c.*

*In B. R.  
For throwing  
down Enclo-  
sures, where-  
by, &c.  
Lill. 64.*

*Wiltshire to wit. Anthony Ashley, Baronet, complains of Nicholas St. John, Esq; in Custody (see before) for that to wit, That whereas he the aforesaid A. on the third Day of August, in the 18th Year of the Reign of the Lord Charles the Second, now King of England, &c. was and yet is seised of and in one Close of Pasture, containing 124 Acres; and of one other Close*  
of

of Pasture, containing 80 Acres, lying within, and included in the Close aforesaid, both which Closes are known by the Name of *The Purlieus*, otherwise *Russels Wood*, lying in *Liddiard Milicent* in the County aforesaid, in his Demeasns as of Fee, which said several Closes were on the said third Day of *August*, in the 18th Year aforesaid, and had been for divers Years then last past well and sufficient hedged and ditched, and otherwise inclosed by him the said *A. A. C.* for the Preservation of the Grasing and Feeding in the same Closes respectively growing. And whereas the aforesaid Close of Pasture, containing 124 Acres, is now and hath been, from the Time whereof the Memory of Man is not to the contrary, next adjoining to a certain common Field, call'd *P. Common*, on the North East, and North and North-West. And to another common Field called *Webb's Purlieu*, on the South-West, which said inclosed Fields lye together no way separated, or divided between themselves, by any Hedges or Fences. And whereas the Grass yearly growing in the said two inclosed Closes, hath for the Space of 16 Years now last past been lett at a reasonable Price of the yearly Value of 60 *l.* of lawful Money of *England*. Yet he the said *N.* being not ignorant of the Premisses, but contriving and maliciously intending totally to deprive the said *A.* of (from) all Commodity (Benefit) and Profit of the said Closes, did on the said third Day of *August*, in the 18th Year aforesaid, at *Liddiard M.* aforesaid, break and throw down the said Hedges of the said *A. A.* to wit, 10 Perches of the Hedges inclosing

*Malfeasance.*

*The Seisin.*

*The Buttals.*

*The Gravamen.*

*Mal-  
seas-  
ance.*

inclosing the aforesaid Close, containing 80 Acres of the said *A. A.*'s Land, as aforesaid; and kept and continued the said Hedges so broken and thrown down from the said third Day of *August*, in the 18th Year aforesaid, until the 23d Day of *October*, in the same 23d Year, by making at several Days and Times, during the said Space of Time, divers Ruptures and Breaches in the Hedges and Fences, of as well the said Close, containing 80 Acres, as of the said Close, containing 124 Acres. By Reason (Occasion) whereof divers Beasts and Cattle, *to wit*, Horses, Oxen, Cows, Sheep, Heifers, Calves, (&c.) of Persons unknown at that Time, going and depasturing in the common Fields aforesaid, did on the said third Day of *August*, in the 18th Year aforesaid, and at divers other Days and Times between the same third Day of *August*, and the aforesaid 23d Day of *October*, in the 23d Year aforesaid, enter into the several Closes of the said *A. A.* aforesaid, and tread down, waste and spoil, eat up and consume the Grass and Herb of the said *A. A.* then and there growing, amounting in the whole to the Value of 300 *l.* whereby he the said *A. A.* lost and was depriv'd of the whole Commodity and Profit of the said Closes, for and during the whole Time aforesaid, to the Damage of him *A.* 300 *l.* and thereof he brings his Suit.

*But note, the above Declaration may be laid by Way of Trespass, which see hereafter.*

*A De-*

*A Declaration in Case, for eating the Common with Conies.*

*Doak to wit.* J. S. complains of E. F. Esq; in Custody, &c. for that, *to wit,* that whereas he the same J. had been continually (constantly) for the Space of four Years now last past, and yet is seized of a Messuage and fifty Acres of Land, with the Appurtenances lying in C. in the said County of Y. in his Demeasn, as of Fee. And the same J. and all those whose Estate he hath of and in the said Tenements, from the Time whereof the Memory of Man is not to the contrary, have had and been accustomed to have Common of Pasture, in a certain great Pasture in C. in the County aforesaid, called C. Barnsdale, for all their commonable Beasts (Cattle) levant and couchant (lying down and up-rising) in and upon the aforesaid Messuage and 50 Acres of Land, in every Year, at all Times of the Year, as belonging and appertaining to the said Messuage, and 50 Acres of Land with their Appurtenances. Yet he the said E. F. being not ignorant of the Premises, but contriving and unjustly intending to hinder the said J. of his said Common of Pasture, in the said Pasture call'd C. Barnsdale aforesaid, and wholly to deprive him of the Profit and Benefit of the same, did on the first Day of *December*, in the sixth Year of the Reign of the Lord the now King, and continually afterwards hitherto keep and feed so many Conies, *to wit,* 10000 Conies in and upon the said Pasture call'd C. Barnsdale, that  
by

In B. R.  
For eating the  
Common with  
Conies.  
Lilly 62.

*Malfeasance.*

by Reason thereof the greatest Part of the the Grass and Herbage there was by the said Conies eaten up and consumed; whereby the said J. during the whole Time aforesaid, could not have and (take) receive his said Common of Pasture for his Cattle (Beasts) then levant and couchant (up-rising and down-lying) in the said Pasture call'd *C. Barnsdale*, in so ample and beneficial a Manner, as he formerly (before that Time) had and used to have; whereof he the same J. saith, That he is the worse, and hath Damage to the Value of 50 l. and thereof he brings his Suit.

*A Declaration in Case, by a Remainder-Man, against a Copyholder for Life, for committing Waste.*

In C. B.  
By a Remain-  
der-Man a-  
gainst Tenant  
for Life doing  
Waste. See  
3 Lev. 128.  
Hern. 161.

*York to wit.* **W** J. late of S. in the Coun-  
ty aforesaid, Yeoman,  
was attached to answer to S. J. of a Plea of  
Trespas on the Case. And whereof the same  
S. by J. R. his Attorney, complains, That  
whereas one W. C. now deceased, was in his  
Life, *to wit*, on the third Day of January,  
in such a Year of the Lord, or (King's Reign)  
at S. in the same County, seised of and in  
one Messuage, with the Appurtenances situ-  
ate and being in S. aforesaid, held of the  
Manor of S. in the same County, by Copy  
of Court-Roll of the same Manor in his De-  
measn, as of Fee, at the Will of the Lord,  
according to the Custom of that Manor. And  
being so seised, he the said W. C. afterwards,  
*to wit*, on the same 30th Day of January, in  
the Year aforesaid, out of the Court of the  
said

Pal-lease  
sance.

said Manor, according to the Custom of the same Manor, surrender'd into the Hands of the Lord of the same Manor, by the Hands and Acceptance of certain Persons, *to wit*, T. K. and J. A. two customary Tenants of the said Manor, the aforesaid Messuage, with the Appurtenances by the Name of the *Grass-Place*, built adjoining on the East Side (*Ec. as it is bounded or described*) in S. aforesaid, to the Use of Jane his then Wife, for the Term of the Life of her Jane, and after her Death, to the Use of the said S. J. his Heirs and Assigns. And he the said W. C. being seised of the said Messuage with the Appurtenances in the Form aforesaid, afterwards, *to wit*, on such a Day and Year, and Place, died seised of the said Estate, in the said Manor and Appurtenances, after whose Death, *to wit*, at a Court-Baron (W. W. Esq; being then the Lord of the said Manor of S.) held in and for the said Manor at S. aforesaid, on the fifth Day of April, in the said Year 1730, before R. B. Gentleman, then Steward of the same Court, the Surrender so made by the said W. C. in his Life, as aforesaid, was duly presented and inrolled. And the said Jane was then and there rightly and lawfully admitted Tenant (among other Things) to the said Messuage with the Appurtenances, for the Term of the Life of the said Jane, with the Remainder thereof, to the said S. his Heirs and Assigns in the Form aforesaid; by Virtue of which said Surrender and Admission she the said Jane, enter'd into the said Messuage with the Appurtenances, and was thereof seised in her Demeasn, as of *Freehold* (2) for the Term of the Life of the said Jane, at the

Copyhold sur-  
render'd at a  
Court-Baron,  
&c.

To the Use of  
J. for Life,  
Remainder to  
S. in Fee, and  
Admission  
thereon.

*Malfeasance.*

*Tenant for Life marries, and the Husband commits Waste, in pulling down a Barn, &c. to his Damage 100l.*

*\* Note, This seems Tref-Pass.*

the Will of the Lord, according to the Custom of the said Manor, the Remainder thereof belonging to the said *S.* his Heirs and Assigns as aforesaid. And she the said *Jane* being so thereof seised, afterwards, to wit, on or about such a Day, &c. at *S.* aforesaid, did take to her Husband the said *W. J.* whereby they the said *W.* and *Jane* were seised of the Messuage aforesaid, with the Appurtenances in their Demeasne as of Freehold (2) in Right of the said *Jane*, for the Term of the Life of the said *Jane*, at the Will of the Lord, according to the Custom of the said Mannor. And he the said *W. J.* with *Jane* his said Wife (or in Right of the said *Jane*) being so seised thereof, for the Life of the said *Jane*, tho' the Remainder of and in the said Messuage and Appurtenances, belonged to the said *S.* his Heirs and Assigns, as aforesaid. Yet he the said *W. J.* being not ignorant of the Premises, but contriving and fraudulently intending to disinherit, and wholly to deprive him of the Messuage and Appurtenances aforesaid, and also greatly to diminish and depreciate the Estate and Interest, which the said *S.* had (in Remainder) of and in the said Messuage and Appurtenances, on the first Day of *February*, in the fourth Year of the Reign of the Lord the now King, at *S.* aforesaid, did with \* Force and Arms pull down and demolish a certain Barn, Parcel of the same Messuage of the Value of 50 *l.* and then and there took and carried away, and sold the Timber, Stones, and Tiles, and other Materials of the same Barn, and converted and disposed to his own Use the Monies thereof arising; whereby he the same *S.* became,

became, and is not only very much hurt and prejudiced in his said Estate and Interest, of and in the said Messuage and Appurtenances; but also he the said S. is wholly disinherited and deprived of the said Barn and Appendances, being Parcel of the Messuage (and Appurtenances) aforesaid, to the Damage of him S. 100 l. &c.

*See the Demurrer hereto and Argument thereon, 3 Lev. 130, 131.*

*A Declaration on a Warranty of Wines to be good, which proved to be corrupt, &c.*

Middlesex to wit. **A.** B. complains of *C. D.* In B. R.  
On a Warranty of Wines to  
be good. See  
Hern. 224,  
&c.  
in Custody, &c. to wit, Whereas he the said *C. D.* such a Day and Year, at such a Place in the said County of *M.* in Consideration of 16 l. of good and lawful Money of Great-Britain, by the aforesaid *A.* to the said *C.* then and there in Hand paid, did bargain and sell unto him the said *A.* one Tun of Wines; and upon making of the said Bargain and Sale, he the said *C.* did then and there warrant the same Wines to be good and perfect Wines, and in good Condition. (Yet) he the said *A.* in Fact saith, That the same Wines were at the Time of the said Bargain and Sale, corrupted and adulterated Wines, and if drank, hurtful to Man's Body, whereby he the said *A.* upon the said Bargain and Sale, and Warranty, was then and there very much deceived and defrauded, to the Damage of the said *A.* 10 l. &c.

P

A De

*Warranty.*

*A Declaration on warranting a Horse to be the Seller's own, when it was another Man's.*

*In C. B.  
On Warranty  
of a Horse to  
be his own,  
See Hern. 224,  
&c.*

*Surrey to wit.* **C.** D. late of *J.* in the County aforesaid, Yeoman, was attached to answer to *A. B.* of a Plea, That whereas he the said *A.* had such a Day and Year, at such a Place in the County aforesaid, bargain'd and agreed with him the said *C.* for and concerning a certain Horse then and there proposed to be sold by him the said *C.* to the said *A.* for the Price of 16 *l.* of lawful Money of Great-Britain, which said Monies were then and there paid by the said *A.* unto the said *C.* He the said *C.* did then and there assume and warrant to the said *A.* that the said Horse so bargain'd and sold by him the said *C.* was the proper Horse of him the said *C.* and that the same Horse did of Right belong and appertain to him the said *C.* whereas in Truth the same Horse was at the Time of the said Bargain and Sale, the proper Horse of one *K. G.* and did of Right belong and appertain to him the said *K. G.* and the said *C.* did then and there falsely and deceitfully sell the said Horse to the said *A.* and did accordingly then and there deliver the said Horse to the said *A.* as the proper Horse of him the said *C.* with such Warranty as aforesaid, to the Damage of him *A.* 20 *l.* and thereof he the said *A.* brings his Suit.

*A De-*

*A Declaration against the Master of a Hoy for falling foul on, and sinking the Plaintiff's Boat.*

Middlesex to wit. **W**. B. complains of **J. D.** in Custody, &c. for that, to wit, That whereas the aforesaid **W.** on the sixth Day of *March*, in the fourth Year of the Reign, &c. at the Parish of *Chelsea*, in the said County of *Middlesex*, was lawfully possessed of a certain flat-bottom'd Boat, then loaden with Dung and Compost (Manure, &c.) and swimming (floating) at Anchor in the River of *Thames*, within the Parish aforesaid, as his own proper Boat. And (whereas) the aforesaid **J. D.** was then and there Master and Governor of a certain Barge then sailing in the said River of *Thames*, within the same Parish, towards the City of *London*; he the said **J. D.** did then and there so negligently and unskillfully guide and govern his said Barge, that the same Barge for want of good and sufficient (due) Care and Guidance (Government) did so forcibly (violently) rush, force against (fall foul on) the said Boat of the said **W.** so loaden as aforesaid, that the same Boat was broken, and the Compost (&c.) therein were sunk. By Reason whereof he the said **W.** not only wholly lost and was deprived of all his said Compost (Dung) contained in the same Boat; but also the whole Use, Profit, and Benefit of his said Boat, for the Space of 14 Days then next following, and was likewise put to great Charges and Expences in and about the

*In B. R.  
Against a Hoy  
Master for  
sinking the  
Plaintiff's  
Boat.  
Lilly 38.  
Q. Hern. 213.*

*Malfeasance.*

raising (weighing up) recovering, repairing, &c. his said Boat; whereof he the said *W.* saith, That he is the worse, and hath Damage to the Value of 40*l.* and thereof he brings his Suit, &c.

*A Declaration for untying a Cord or Rope that fastened a Boat, whereby she received Damage.*

*In C. B.  
For loosing a  
Boat tyed to a  
Wharf, &c.*

*Portfolk to wit.* **C.** D. was attached to answer to *A. B.* of a Plea, That whereas he the said *A.* was (on *such a Day in such a Year*) possessed of a certain Fishing-Boat, call'd *The Betty*, of the Value of 100*l.* lying in the Port of *Great Yarmouth*, in the same County, against the Side of a certain Wharf there, called *The Key*, and tyed with a certain Rope called a *Fast*, unto a certain Post erected upon the said Wharf in *Great Yarmouth* aforesaid, as of his own proper Fishing-Boat; and being so thereof possessed, he the said *C. D.* contriving and maliciously intending to spoil and deprive the said *A.* of all Benefit and Advantage of his said Fishing-Boat, did afterwards, *to wit*, on *such a Day* in the same Year aforesaid, at *Great Yarmouth* aforesaid, voluntarily and maliciously untye (or cut) the said *Fast* (or Rope) wherewith the said Fishing-Boat was tyed to the said Post, in the Manner aforesaid, whereby the said Fishing-Boat did float with the Stream; and the Water in the said Port then running with great Force and Violence towards the Stone Bridge in *Great Yarmouth* aforesaid, the said Fishing-Boat thereby

# On an Assumpsit.

213

Regl-  
gence.

by driven by the Violence of the Stream to (against) the same Bridge with so great Force and Violence, that the same Fishing-Boat was thereby very much bruised (broken) and damnified, to the Damage of the said *A* 40 l. &c.

*A Declaration on a Writ of Privilege by an Attorney against a Quack Doctor for an ill Cure.*

London to wit.

**A.** B. an Attorney in Per-  
son complains against  
*C. D.* upon an Attachment of Privilege, to  
wit, That whereas he the said *A.* on the 20th  
Day of *August*, in the sixth Year of the Reign  
of the Lord the now King, and long before  
had and hitherto hath the Stone in his Blad-  
der and an Excoriation in his same Bladder,  
by Reason whereof he the said *A.* endeavour-  
ed to find (procure) a Cure for the dissolving  
of the said Stone, and healing of the said Ex-  
coriation in his said Bladder, and the said *C.*  
well knowing the Premisses, being a Man  
ignorant and unskilful in the Cure of the In-  
firmities aforesaid, contriving and intending  
craftily and subtilly to deceive and defraud  
the said *A.* on the Day and Year abovesaid,  
at *London* aforesaid, in the Parish of *St. Mary*  
*of the Bows*, in the Ward of *Cheap*, did assure  
and affirm to the said *A.* That he was a Do-  
ctor in Physick, and was very skillful, and  
had the Knowledge and Art (Secret) of dis-  
solving the said Stone in the Bladder, and of  
healing the said Excoriation therein, whereby

In C. B.

By an Attor-  
ney on his Pri-  
vilege against  
an Empyrick  
for an ill Cure.  
See Lib. Ent.  
463. a. b.  
11 H. 6. 8.  
pl. 10.

*Negligence.*

*Retainer and undertaking the Cure.*

*Ignorance of the Quack.*

*Damage to the Plaintiff.*

he the said *A.* giving Credit to the said Assertion and Affirmation of the said *C.* did then and there Retain the said *C.* to dissolve the said Stone in the Bladder of him the said *A.* and also to heal the Excoriation in the same Bladder, whereupon he the said *C.* for and in Consideration of 10 Guineas then and there in Hand paid by the said *A.* to the said *C.* and a Promissory Note of Twenty Guineas more to be paid by the said *A.* to the said *C.* when he the said *C.* should have finished (perfected) the said Cure; did take upon himself the said Cure of dissolving the said Stone, and healing the said Excoriation in the said Bladder of the said *A.* whereas he the said *C.* at the Time of his said Assertion and Affirmation aforesaid, or ever afterwards or before had no Knowledge or Skill of dissolving the Stone in the Bladder, or of healing the Excoriation in the Bladder, nor ever was a Doctor in Physick, or a Licensed Physician or Surgeon, &c. By Reason whereof he the said *C.* so negligently, ignorantly and unskillfully did intend (attend) attract and (manage) about dissolving the said Stone in the Bladder of the said *A.* and healing the Excoriation in the same Bladder, that he applied and gave to the said *A.* such Medicines as were not only unbefitting and improper, but even dangerous and pernicious and repugnant to the Dissolution of the said Stone in the said Bladder, and to the Cure of the said Excoriation; so that from thenceforth, and for want of Knowledge of the same *R.* in that Behalf the said Stone in the Bladder of him the said *A.* doth not only still remain undissolved;

solved, and the said Excoriation unhealed, but by Reason of the said improper and pernicious and dangerous Medicines, so unskillfully administered by the said C. as aforesaid, the same are daily become more and more dangerous and hurtful to the said A. to the great Deceit and Impoverishment of the same A. and great danger of losing his Life, whereof he saith, That he is the worse, and hath Damage to the Value of 100 l. &c.

**Pegligence.**

\* *Pledges of Prosecution*

{ John Doe.  
and  
Rich. Roe.

\* N.B. These Pledges are held to be essentially necessary in Declarations.

*Implied.*

*The Entry of a Declaration against a  
Common Carrier for losing Goods,  
&c. (on the general Custom of the  
Realm)*

N. B. Of the like Nature with this may seem those before, touching Non-feasances as in negligent keep of Fire, &c. But here the Action is said to arise by Reason of the Reward for the Carriage and Care of the Goods, which to me seems an implied Contract or Assumpsit.

*Pleas before the Lord the King, at Westminster, of Easter Term, in the Seventh Year of William the Third, now King of England (Great-Britain) &c. Roll. 242.*

In B. R. *London to wit.* **I**T is to be remembered, that  
Entry of a *erewhile, to wit, in Hillary*  
Declaration, *Term last past, before the Lord the now*  
&c against a *King, at Westminster, came J. D. Knight and*  
Common Carrier for Loss of *Baronet, by J. P. his Attorney, and brought*  
Goods, &c. *into the Court of the said Lord the now King*  
See 2 Salk. *then there, his certain Bill against J. J. a*  
307. *Common Carrier in Custody of the Marshal,*  
1 Salk. 10. *&c. (vide infra) of a Plea of Trespass upon*  
Dalston against Janfon. *the Case, and there are Pledges of the Prosecution (i. e. to indemnify the Sheriff, &c.) to*  
*wit, John Doe and Richard Roe, which said*  
*Bill*

Bill follows in these Words, *to wit*, London *Implied*  
to wit. J. D. Knight and Baronet, complains  
of J. J. a Common Carrier in Custody of  
the Marshal of the *Marshalsea* of the Lord  
the now King, before the King himself, That  
whereas he the foresaid J. on the 16th Day  
of *March*, in the Year of the Lord 1693, was  
and long before, and always afterwards hi-  
therto hath been, and yet is, a Common  
Carrier of Goods and Chattels (Wares, Mo-  
neys, and other Commodities) and for his  
Profit hath used and been accustomed for  
and during that said whole Time to carry  
Goods, &c. for a certain Hire and Reward,  
from *Wakefield* in the County of *York* to *Lon-*  
*don*, and from *London* to *Wakefield* afore-  
said, for any Person desiring such Carriage. And  
whereas by the Law and Custom (of this  
Kingdom) of *England*, every Common Carrier  
of Goods and Chattels, who receives the  
Goods and Chattels of any Person so to be  
carried (for Hire or Reward) is bound to keep  
and carry the same without Substraction and  
Loss; so that no Damage may in any Man-  
ner arise to such Person from the Negligence  
or want of Care in such Common Carrier, or  
his Servants. And whereas the said J. on the  
said 16th Day of *March*, in the said Year of  
the Lord 1693, at *London* afore-  
said, *to wit*, in the Parish of the *B. M.* of the *Arches* (*Bows*)  
in the Ward of *Cheap*, in *London* afore-  
said, was possessed of the Goods and Chattels follow-  
ing; *to wit*, one Deal Box, containing 100  
Pieces of coined Gold, called Guineas, of  
lawful Money of *England*, as of his own (pro-  
per) Goods and Chattels, and he the said J.  
being so possessed, did on the same 16th Day  
of

*Negli-  
gence.*

of *May*, in the said Year of the Lord 1693, at *London* aforesaid, *to wit*, in the Parish and Ward aforesaid, deliver the said Deal Box, with the said 100 Pieces of coined Gold therein contained, unto him the said *J. J.* to be carried from *London* aforesaid to *Wakefield*, in the said County of *York* aforesaid, and there to be delivered, he the said *J.* being to have a Reward (Hire) for the said Carriage and Delivery as aforesaid; and he the said *J.* did then and there take and receive the same Box, with the said 100 Pieces of coined Gold, called *Guineas*, to be carried and delivered in the Form aforesaid; yet he the said *J.* hath not at any Time afterwards hitherto carried and delivered the said Box, with the said 100 Pieces of coined Gold, called *Guineas*, in Manner as aforesaid (nor re-delivered the same, or any Part thereof to the said *J. D.* or to any other Person to his Order) but the same Box, together with the said 100 Pieces of coined Gold, called *Guineas*, therein contained as aforesaid, were afterwards, *to wit*, on the 17th Day of *March*, in the said Year of the Lord 1693, at *London* aforesaid, in the Parish and Ward aforesaid, by Reason of the said Negligence (want of Care) in the Custody thereof by the said *J. J.* (utterly) wholly lost and (wasted) destroyed. (Note; in the Original there is another Count, added in Trover for the said Box and *Guineas*; but the Court held that to be of a different Nature from the above, and therefore not to be joined in the same Declaration.) To the Damage of him the said *J. D.* 150*l.* and thereof he brings his Suit.

To this the Defendant pleaded not Guilty,  
*Et. See 2 Salk. 704.* A

*A Declaration in Case for arresting and holding to Special Bail where none is required by Law.*

Entred Trin. 10th of W. 3. Roll. 162.

Robins against Robins.

Cornwall to wit. **S.** R. Gent. complains of **S.** J. R. Gent. in Custody, &c. (as above) for that, to wit, that where as he the foresaid J. never had any lawful Cause of Action against him the said S. so that by the Laws (and Statutes) of this Kingdom, the Body of him the said S. ought not to have been taken, arrested, and detained in Prison untill he the said S. should find sufficient Manucaptors (Bail) to answer to the said S. in the same Cause (Action) yet he the said J. well knowing the Premisses, but contriving and maliciously intending unjustly to grieve, vex, (prejudice, damnify, oppress) and injure him the said S. in this Particular, and as much as he could to hurt (blacken, detract from) the good Fame (Credit, Reputation, &c.) he the said J. on the 28th Day of May, in the 9th Year of the Reign of the Lord William the Third, now King of England, at B. in the County aforesaid, did by Colour (Pretence) of a certain Mesne Process in the Law (commonly called a Latitat) cause the said A. to be arrested and charged with an Action of 10 l. as so much Money due by the said S. to him the said J. and al-

In B. R.  
For arresting  
and holding  
to Bail where  
none is re-  
quired by  
Law. See  
2 Salk 727.  
1 Salk. 15.  
  
Note; by the  
Stat. 13 C. 2.  
c.  
No Man was  
to be held to  
Special Bail,  
except the  
Cause of Acti-  
on was 20 l.  
or upwards  
See the Stat.  
and Q. inde 2.  
tho'

## Declarations, &amp;c.

Malice.

tho' he the said *S.* did then and there, by his Attorney tender an Appearance or Common Bail to the same Action, and hath been always ready to appear to the same Mesne Process, at the Day of the Return thereof to answer to the same *J.* according to the Exigence of the same Process; Yet he the same *J.* maliciously caused and procured the same *S.* to be then and there, *to wit*, on the Day and Year aforesaid, at *B.* aforesaid, to be imprisoned, and there in Prison to be detained for the Space of six Months (then next following) for this Cause only, *to wit*, that he the said *S.* did not then and there find sufficient Manucaptors (Bail) to answer to the said *J.* upon the said Process, whereby he the said *S.* was unjustly compell'd to lay out and expend great Sums of Money for his Sustenance in the said Prison, and the necessary Affairs of him the same *S.* during the same Time were neglected and left undone; and the said *S.* was also thereby greatly prejudiced in his Manner of Life, very much troubled and disordered in his Mind, and greatly hurt in his Credit and Reputation, whereof he the said *A.* saith, That he is the worse, and hath Damage to the Value of 150*l.* &c.

A De

*A Declaration for maliciously arresting in the Sheriffs Court, from whence it was removed by Habeas Corpus into B. R. and the Plaintiff there non-pross'd.*

London to wit. **H.** B. the Younger com- In B. R. For  
 Custody, &c. (see before) plains against **J. T.** in a malicious  
 That whereas the foresaid **J.** contriving and Arrest in the  
 maliciously intending unjustly to grieve and Sheriff's  
 oppress the same **H.** and to cause him to be Court, and  
 kept and detained in Gaol for (default of thence remov-  
 Manucaptors) want of Bail, on the 23d Day ed by a Hab.  
 of November, in the Twelfth Year of the Corpus, &c.  
 Reign of the Lady Anne, late Queen of Great See Lilly 35.  
 Britain, at London aforesaid, to wit, in the Without pro-  
 Parish of, &c. and Ward of, &c. and within bable Cause.  
 the Jurisdiction of the Court of the said late  
 Queen, held before **J. S.** Esq; one of the  
 Sheriffs of the said City of London, caused  
 and procured him the said **H.** to be arrested  
 and imprisoned by Pretence and Colour of  
 a certain Plaint, entred and levyed in the  
 foresaid Court of the said late Queen, held  
 before the same Sheriff, at London aforesaid,  
 in the Parish and Ward aforesaid, on the same  
 Day and Year, at the Suit of him **J.** in a  
 Plea of Trespas on the Case there laid against  
 him **H.** to the Damage of him *John* 500*l.*  
 and whereas in Truth and in Fact, he the  
 said **J.** had at the Time of the said Arrest  
 and Imprisonment no probable Cause of  
 Action against the same **H.** yet, he the said  
**J.** did detain and caused to be detained the  
 said **H.** in Prison under that Arrest, at Lon-  
 don

**Palice.**

**Hab. Corp.**  
cum causa  
jud.

don aforesaid, in the Parish and Ward aforesaid, from the said Time of the said Arrest, until and upon the 10th Day of *December*, in the 13th Year of the Reign of the said late Queen, for want of Bail, to answer to the said pretended Demands in the said Action, on which said 10th Day of *December* in the Year last aforesaid, he the said *H.* was by Virtue of a certain Writ of the said late Queen of *Habeas Corpus cum Causa*, directed to the Mayor, Aldermen and Sheriff of *London*, brought, being then in Custody by the said *J. Sharp*, and one *Francis Forbes*, Esq; Sheriff of *London* aforesaid, before *R. E. Knt.* then a Justice of the said late Lady the Queen (assigned to hold Pleas in the Court of the said Lady the Queen, before the Queen herself) at his Chamber, situate in *Serjeant's-Inn* in *Chancery Lane*, in the Parish of *St. Dunstan's* in the West, in the Ward of *Farringdon* without, and then and there (for default of Bail and Security, to answer to the said *J.* in the Plea aforesaid) was by the same Justice committed to the Custody of the Marshal, &c. at the Suit of the said *J.* in the Plea aforesaid; and by the said Writ of *Habeas Corpus* of the said *H.* and the Return thereof, and the Commitment of the said *H.* (now) remaining, filed of Record in the Court of the now Lord the King, at *Westminster*, before the King himself, doth more fully and certainly appear; by Virtue of which said Commitment one *M. C.* Esq; then Marshal of the *Marshalsea* of the said Court of the said late Queen, before the Queen herself, afterwards, to wit, on the said 10th Day of *December*, in the Twelfth Year of the said Queen as aforesaid,

said, took and had him the said *H.* into his Custody in the said Prison of the said late Queen, and from that Time always afterwards, until the 14th Day of *October*, then next following, detained the said *H.* in the same Prison for want of Bail, to answer to the said *J.* in the Plea aforesaid, without any Bill or Declaration being (tho' no Bill, &c. was) during the whole Time of the said Imprisonment, exhibited, delivered or filed against him the said *H.* in the said Court of the said late Queen, before the Queen herself, in the Cause aforesaid; and without any Prosecution whatsoever in the same Cause or Action. Therefore it was (thereupon) considered by the said Court of the said Lady the Queen, before the Queen herself, That the said *John* should take nothing by his Pledges, to wit, *John Doe* and *Richard Roe* should be thereof in Mercy (amerced) and that the foresaid *H.* should go thereof without Day, and upon that Occasion (by Reason thereof) he the said *H.* afterwards, to wit, the same Day and Year last mentioned, by Virtue of a certain Writ of the said late Lady the Queen, of a *Supersedeas*, (and prosecuted) issuing out of the said Court of the said late Lady the Queen, before the Queen herself, directed, delivered to the Marshal of the *Marshalsea* of the Court of the said Lady the Queen, before the Queen herself, commanding the said (same) Marshal, that he should without Delay deliver the said *H.* from the said Prison of the said late Lady the Queen, wherein he was then detained, according to the Demand of the same Writ, as by that Writ remaining, filed of Record in the Court of

*Plaintiff non-pross'd for not declaring, &c.*

*A Supersedeas thereon.*

**Palace.**

*Averment of  
no Cause of  
Action.*

*The Grava-  
men.*

of the Lord the now King, before the King himself, may more fully and plainly appear. (*And also*) whereas in Truth and in Fact, he the said *J. T.* had at the Time of levying the said Complaint in the foresaid Court of the said late Lady the Queen, before the said Sheriff of *London*, against him *H.* or at any Time before or afterwards, no probable Cause of Action whatsoever against the said *H.* for the foresaid pretended Damage of 500 *l.* or any Part thereof, nor any Colour or Pretence to arrest him the said *H.* for the said 500 *l.* or any Part thereof; by Reason of which said unjust and malicious Arrest and Imprisonment of him the said *H.* he the said *H.* was not only detained in Prison, and deprived of his Liberty during the whole Time aforesaid; but also he the said *H.* was forced and compelled to undergo, and be at great Labours, Charges, and Expences for the obtaining of the Release (Discharge) of his Imprisonment, *to wit*, at *London* aforesaid, and in the Parish and Ward first above-mentioned, whereof the said *H.* saith, That he is the worse, &c. Damages 500 *l.*

*A De-*

**A Declaration in Case on a Conspiracy to  
Indict one of Barratry.**

**Wideler to wit.** **R.** G. complains of **R. S.** and **C. P.** in Custody, **Gr.** For that, to wit, That whereas he the said **R. G.** was and always hath been, and still is a good, true, faithful, peaceable and honest Subject and Liege of the Lady the now Queen, and of good Name, Fame and Reputation, Conversation, Behaviour, Condition, and hath always behav'd himself as a good, true, faithful, peaceable and honest Liege and Subject of the said Lady the now Queen, without any Scandal, Imputation, Spot or Stain (of the Crime of Barratry) and from the Time of his Birth hitherto hath always been reputed and known among his Neighbours, and other Subjects of the said Lady the now Queen, to whom he the said **R. G.** was known to be wholly free from and unstained with the said Crime of Barratry, to behave and govern himself as a good quite and a peaceable Subject, and to be in no wise a Disturber of the Peace of the said Lady the now Queen. And whereas he the said **R. G.** by reason of his said good, quiet, peaceable and honest Conversation during the whole Time aforesaid, was of good Credit and Estimation, and did, lawfully and honestly gain, obtain and acquire among his Neighbours, and other Subjects of the said Lady the now Queen, with whom he the said **R. G.** had any Dealings, divers great Gains and Profits for the

**Q**

Sustenance

*In B. R.  
Case on a Con-  
spiracy to in-  
dict one of  
Barratry.  
See 2 Salk.  
763. 764 and  
Mich. 3 Anti.  
Rot. 144.*

**Conspiracy**

Sustenance and Support (Maintenance) of himself and his Family ; yet they the said *R. S.* and *C. S.* being not ignorant of the Premises, but contriving and maliciously intending not only to deprive him the said *R. G.* of his said good Name, Fame and Estimation, but also to bring him the said *R. G.* into publick Infamy, Scandal and Disgrace, that by that Means the good and honest Subjects of the said Lady the now Queen, might withdraw themselves from the Consortship (Society) Company of him the said *R. G.* and might wholly cease and abstain from any Way of Corresponding with or having any Commerce or Dealings with him ; on the 10th Day of September, in the first Year of the Reign of the said Lady *Anne*, now Queen of, &c. at the Parish of *St. James Clerkenwell*, in the County aforesaid, by a Conspiracy among themselves, then and there before had, did then and there falsely and maliciously, without Cause or Colour of any such Crime perpetrated (committed) by him the said *R. G.* impose the said Crime of Barratry on the said *R. G.* and caused him to be indicted as a Barrator, and as a publick and common Disturber of the Peace of the said Lady the now Queen, and they the said *R. S.* and *C. P.* at the Parish aforesaid, in the said County of *M.* in Prosecution and Execution of their said malicious Intention and Conspiracy aforesaid, and with a malicious Intention to blacken, defame and scandalize the said *R. G.* did falsely and maliciously, without any legal or true Cause, indict, and procure and cause to be indicted the said *R. G.* by the Name of *R. G.* late

late of the Parish of St. *James Clerkenwell*, in *Conspiracy*  
the County of *M. Yeoman*, at the General  
Quarter Sessions of the Peace of the said Lady *The Indict-*  
the now Queen, then held at *Hicks's-Hall*, in *ment at*  
and for the said County of *Middlesex*, before *Hick's-Hall.*  
*John Bennet, Henry Hawley and Joseph Offley,*  
Esqs. and others their Companions, Justices  
of the said Lady the Queen, assigned for Con-  
serva<sup>n</sup> of the Peace, within the said Coun-  
ty, and also to hear and determine divers  
Felonies, Trespasses, Contempts and Mal-  
feasances perpetrated within the same County  
(as follows, to wit,) That he the same *R. G.* on  
the first Day of *January, &c.* (setting forth  
the Indictment to) contrary to the Peace of the  
said Lady the now Queen, her Crown and  
Dignity. And thereupon they the said  
*R. S.* and *C. P.* did further falsely and mali-  
ciously prosecute and caused to be prosecuted  
the same Indictment against him *R. G.* un-  
til the said Lady the now Queen, did after-  
wards, for certain Causes, cause that Indict-  
ment to come (be brought) before her to be  
determined: And it was commanded, That  
the Sheriff of the County aforesaid, should  
not omit, &c. but that he should (certify the  
said Indictment, &c. and) Cause him the  
said *R. G.* to come before her, &c. to an-  
swer, &c. And he the said *R. G.* afterwards,  
to wit, in the Term of *St. Michael*, in the  
Second Year of the Reign of the said Lady  
the now Queen, in the Court of the said  
Lady the Queen, before the Queen herself,  
the same Court being (then) at *Westminster*, And discharg-  
was according to the Law and Custom of *ed in B. R.*  
*England*, discharged in a due and lawful

Removed by  
Certiorari.

**Conspiracy** Manner from the said Indictment ; by (Reason) Pretence of which said (Conspiracy, Indictment and) Premisses, so contrived, published, made, exhibited and prosecuted by them the said *R. S.* and *C. P.* against him the said *R. G.* in the Form aforesaid, he the said *R. G.* is not only very much hurt and prejudiced in his good Name, Fame, Credit and Reputation, and weakned in his Body, and trouble (disordered) in his Mind ; but also hath been forced to be at great Costs and Charges, and to lay out and expend divers great (large) Sums of Money for the discharging and acquitting himself from the said Indictment, and for the Vindication of his Innocence, To the great Disgrace and extream Impoverishment of him the said *R. G.* To the Damage of him the said *R. G.* 100 l. &c.

*Imparling,  
and not Guilty  
pleaded.*

Note.

And now at this Day, *to wit*, Monday next after three Weeks of *St. Michael*, in this same Term ; to which Day they the said *R. S.* and *C. P.* had License of imparling to the said Bill (Declaration) and to answer, &c. before the Lady the Queen, at *Westminster*, came as well the said *R. G.* by his Attorney aforesaid, as the said *R. S.* and *C.* by *E. B.* their Attorney ; and they the said *R. S.* and *C.* do defend the Force and Injury, when, where, and in what Manner the Court of the said Lady the now Queen, before the Queen herself here shall think fit ; and they say, that they are in nothing guilty of the Premisses above imposed (charged) upon them as the said *R. G.* doth above complain against them, and hereof they put themselves upon the Country,

Country, and the said *R. G.* likewise. Therefore let a Jury come thereof (*Ec. as usual in Cases of awarding Venires*) *vide ante.*

Malfeasance.

*See further of malicious Suits, &c. ante.*

*Declaration against a Headborough for billeting Soldiers on the Plaintiff without his Assent.*

Suffer to wit. **T.** M. the elder, complains *Ec.* for that, *to wit,* That whereas he the said *W.* on the 26th Day of November, in such a Year of the King's Reign, at the Parish of *C.* near *Lewes* in the said County of *S.* (he the said *W.* being then a Civil Officer, *to wit,* a Headborough for the half Hundred of *L.* in the same County) unjustly, unlawfully (illegally) and maliciously billeted certain Persons, *to wit,* *C. N. R. T.* and *G. K.* being three Dragoons of the said Lord the now King, upon him the said *T. M.* he the said *T. M.* (being then a Subject of the said Lord the now King, and also an Inhabitant in the Parish, half Hundred, and County aforesaid) without the Consent of him the said *T.* in that particular first had and obtained; which said three Dragoons were, by Reason of the Billetting of them, by the said *W.* as aforesaid, lodged and quartered by him the said *T.* from the said 26th Day of November, until the 20th Day of May then next following, against the Will and Consent of him *T.* and contrary to the Form of the Statute in such Case made and provided. By Pretence of

*In B. R. Against a Headborough for unduly billeting Soldiers. Note, The old Law therein is now altered, but fit to be revived.*

**Dilapidations.**

which said billeting and quartering aforesaid, he the said T. was for and during the Time aforesaid, hinder'd from the quiet Use of his said House, and interrupted in his daily Affairs; and also put (compell'd) to lay out and expend divers Sums of Money, for the Sustainment and Maintenance of the said three Dragoons, during the whole Time aforesaid; whereof the said T. saith he is the worse, &c. and hath Damage 50*l*.

*A Declaration by a Vicar against the Executors of the late Vicar, for Dilapidations.*

In B. R.  
Against the  
Executors of  
a Vicar for  
Dilapidations.  
See Lilly 21,  
67, 22.  
Prac. Reg.  
461.  
Clerg. Law,  
312.

Work to wit. **E.** M. Vicar of the Church of *E.* in the County aforesaid, complains of *J. S.* Gentleman, *E. C.* Clerk, and *H. B.* Widow, Executors of the Testament and Last Will of *T. W.* Clerk, late Vicar of the said Church of *E.* in Custody, &c. for that, *to wit*, that whereas according to the Law and Custom of *England*, which have hitherto obtained and been approved, all and singular the Prebendaries, Rectors, and Vicars of the same Kingdom, for the Time being, are bound to repair and sustain (uphold) all and singular the Houses and Edifices of their respective Prebends, Rectories, and Vicarages, and leave the same so repaired and sustained to their Successors; and that if they shall (do) not leave the Houses and Edifices of such their Prebends, Rectories, and Vicarages so repaired and sustained to their Successors, but permit them to be unrepaired;

repaired; then the Executors of such Prebendaries, Rectors, and Vicars, after their Deaths, shall be bound to satisfy to their Successors, out of the Goods and Chattels of the Testator, so much Money as is necessary and sufficient for the repairing and re-edifying of such Houses and Edifices. (Yet) tho' he the said *T. W.* late Vicar of the said Church of *E.* left at the Time of his Death the Houses and Edifices of that Vicarage unrepaired and dilapidated, so that 200 *l.* will not be sufficient to repair the said Houses and Buildings. And altho' they the said *J. E.* and *H.* after (since) the Death of of the said *T.* to wit, on such a Day and Year, &c. at *E.* aforesaid, were requested to pay to the said *E. M.* so much Money as (was) would be sufficient for the repairing, &c. of the said Houses and Edifices of the said Vicarage. Yet they the said *J. C.* and *H.* and every of them, have altogether wholly refused, and yet do refuse to satisfy the said *E. M.* in any Manner, for the said Irreparations and Dilapidations, to the Damage of him *E. M.* 500 *l.* &c.

*A Declaration for printing another's Copy without Licence of the Owner.*

London to wit. **D.** B. complains of *T. B.* in Custody of the Marshal, &c. for that, to wit, That whereas he the said *D.* on such a Day, in such a Year of the King, at London aforesaid, to wit, in the Parish of the blessed Mary of the Arches,

*In B. R.*  
*For printing*  
*another's Copy.*  
*See Lilly 67*

**Printing.**

*The Plain-  
tiff's Proper-  
ty, and that  
he had printed  
an Impression,  
and had suffi-  
cient in his  
Hands undis-  
posed, &c.*

(Bows) in the Ward of *Cheap*, was, and from that Time continually hitherto hath been, and still is, the true Proprietor of the Copy of a certain Book, entituled, *The English Lawyer, &c.* (i. e. *setting forth the Title-Page, as far as the Author's Name inclusive.*) And that he the said *D. B.* after his being (becoming) Proprietor of the said Copy of the said Book, did imprint, or cause to be imprinted, 1500 Books of the first (*second, &c.*) Impression thereof, and on *such a Day*, in the ——— Year abovesaid, at *London* abovesaid, in the Parish and Ward abovesaid, had then remaining in his Hands more than 100 Books of the said Impression (and on the same Day, or any other Day, between that and bringing the Action at *London* abovesaid, was preparing, or had prepared the Printing Press for a second, &c. Edition of the same Book, i. e. if the Case be so) Yet he the said *T.* being not ignorant of the Premisses, but contriving and fraudulently intending wholly to deprive the said *D. B.* of all the Profit and Benefit of his said Copy, afterwards, *to wit*, on the same Day, &c. in the sixth Year abovesaid, at *London* abovesaid, in the Parish and Ward abovesaid, did without the Licence or Consent of the said *D. B.* imprint, or cause to be imprinted, 2000 Books of the Copy of the said Book of him the said *D. B.* with this following Title, *And that the to wit, The Practising English Lawyer, &c.* (i. e. *setting forth the Title of the pirated Impression*) And he the said *T. D.* did afterwards expose the same Books, so surreptitiously and fraudulently printed, to sale, whereby he the said *D. B.* did totally lose the Profit and Benefit of

*And that the  
Defendant pi-  
rated an Im-  
pression there-  
of.*

of the Sale of his said Books, entitled, *Ec. Printing.*  
 (as the first Title above) so remaining in his  
 the said D. B's Hands, as aforesaid. And al-  
 so of a second (*third, Ec.*) Impression of the  
 same Book; whereof he the said D. B. saith,  
 That he is the worse, and hath Damage to  
 200 l. and thereof he brings his Suit, *Ec.*

See also Lilly's Entries, fol. 63, 64. *A De-* By a Patent  
*claration by Patent Printers against another* Printer for  
*Printer, for printing Almanacks without their* printing sans  
*Consent (sed Quere the Legality of such a Pa-* his Assent.  
*tent.)*

*Before I conclude this Head of Actions on* Note.  
*the Case for Torts, give me leave to add a*  
*few Precedents, touching Actions by or against*  
*Attorneys, Clerks, Bailiffs, Sheriffs, and other*  
*Officers and Ministers of Justice.*

*Decla-*

## Declarations, &amp;c.

*Declarations and Pleadings in Actions brought by and against Attorneys, Solicitors, Clerks, and Officers of Justice, as Bailiffs, Sheriffs, &c.*

Note, We have before given some Precedents of Actions on the Case, by and against Attorneys, for which see Page 3, &c. ante.

*A Declaration by an Attorney against an Executor, for Fees, &c. of soliciting a Suit in Chancery, &c.*

In C. B.  
By an Attorney against an Executor for Fees of soliciting in Chancery, &c.  
See Hern. 178, 179.  
See the like Declarations, Tr. 12. Jac. 1. Rot. 2133.  
Tr. 16. Jac. 1. Rot. 2077.  
& Tr. 17. Jac. 1. Rot. 513.  
See also Hern. 195 & 156.  
Lev. Ent. 23.  
Lilly 27.

Middlesex to wit. **W**. T. Executor of the Testament of E. T. deceased, was attached by Writ of Privilege to answer to T. H. one of the Attorneys of the Court of the Lord the King of the Common Bench, being present here in Court of a Plea, That whereas the said E. in his Lifetime, to wit, on the 27th Day of April, in such a Year of the Reign of, &c. at J. in the County aforesaid, in Consideration that he the said T. would, at the special Instance and Request of the said E. solicit and transact for him the said E. as an Attorney or Solicitor, a certain Cause or Suit then commenced and depending in the Court of Chancery, of the said Lord the King, and appear for the said E. in the said Court of Chancery, then being at Westminster in the said County of Middle-

*Middlesex*, to a certain Bill of Complaint, *Attorneys*, then depending in the same Court, and before that Time there exhibited against the said *E.* by one *W. T.* and would there defend the same Cause or Suit, for and on Behalf of the said *E.* &c. he the said *E.* did assume upon himself, and unto the said *T.* then and there faithfully promised to pay to the said *T. H.* for his Labour for every Term wherein he the said *T.* should sollicite the said Cause for him the said *E.* in the Form aforesaid, the Sum of 6 s. 8 d. besides Attorneys Fees, and all other Costs and Expences which should be laid out and expended by him the said *T.* in and about the Sollicitation and Defence of the said Cause or Suit, when he the said *E.* should be afterwards thereunto required. And whereas (altho') he the said *T.* did afterwards, *to wit*, such a Day in the Term, &c. aforesaid, appear for him the said *E.* in the said Court of Chancery, to the said Bill of Complaint, there exhibited against the said *E.* by the said *W. T.* as aforesaid, and did sollicite and defend that Cause for the said *E.* in his Life-time in the Term aforesaid, and for seven Terms then next following in the same Court of Chancery; for which said eight Terms Sollicitation there was due to him the said *T. H.* from him the said *E.* the Sum of, &c. And whereas there was also due to him the said *T.* from him the said *E.* for Attorneys Fees, for transacting the Affairs of the said *E.* for and during the same eight Terms, the Sum of, &c. And also whereas there was due to him the said *T.* from him the said *E.* for Monies expended and disbursed

## Declarations, &amp;c.

Attorneys.

fed by him the said T. in and about the Defence of the same Suit, being paid by the said T. to divers Clerks, Ministers, and Officers of the same Court, the Sum of, &c. which said several Sums do amount in the whole to the Sum of, &c. Yet (nevertheless) he the said E. in his Life-time, and the said W. T. since his Death, not regarding the Promises and Assumption of the said E. so made as aforesaid, but contriving and fraudulently intending to deceive and defraud him the said T. in this Particular, have not nor hath either of them, paid to the said T. the said Sum of, &c. nor any Penny thereof, altho' he the said E. in his Life-time, and the said W. T. since his Death, to wit, on the third Day of November, in the said sixth Year, &c. at J. aforesaid in the County aforesaid, and each of them, have at divers other Times and Places been thereto requested by the said T. H. but they the said E. and W. have altogether (wholly) refused, and the said W. doth still refuse to pay the same, to the Damage of him T. H. 50 l. and thereof he brings his Suit.

See Lev.  
Entr. 1.

The Pledges of the Prosecution are } John Doe,  
and  
Rich. Roe.

See Hern. 143, 145, 180, 183, of Declarations against Attorneys, for appearing, &c. without Warrant, &c.

The

*The Entry of a Declaration by Bill in C. B. Against an Attorney on an Indeb. Assump. for Goods sold and delivered.*

Hillary, the third of King George (the first) Roll. 1367.

Middlesex to wit. **I**T is to be remember'd, That the third Day of January in this same Term, *Anne Lewin*, Widow, came here into Court by *J. K.* her Attorney, and exhibited to the Justices here her certain Bill against *H. Mackreth*, Gentleman, an Attorney of the Lord the King's Court here (being present here in his proper Person) the Tenor of which said Bill follows in these Words; To the Lord the King's Justices of the Bench, to wit, *Middlesex to wit, A. L.* Widow, by *J. K.* her Attorney, complains of *H. M.* Gentleman, an Attorney of the Lord the King's Court of the Bench here (being present here in Court in his proper Person) of a Plea of Trespass on the Case; for that, to wit, That <sup>1st Count.</sup> whereas the aforesaid *H.* on the first Day of <sup>Ind. Assump.</sup> August, in the Year of our Lord 1712, at the Parish of Saint Clements Danes, was indebted to the same *A.* in 20 l. of lawful Money of Great-Britain, for divers Goods, Wares, Merchandizes, and Things of her *A.* by the said *A.* at the special Instance and Request of the said *H.* to him *H.* before that Time, sold and delivered. And being so thereof indebted, he the aforesaid *H.* in Consideration

Attorneys.

tion thereof, afterwards, *to wit*, the same Day and Year, at the Parish of Saint Clements Danes aforesaid, did assume (take) upon himself, and to the said *A.* then and there faithfully promised, That he the said *H.* would well and faithfully pay and content the aforesaid 20 *l.* unto the said *A.* when he should be thereunto afterwards required. *And also whereas* the aforesaid *H.* afterwards, *to wit*, the same Day and Year, at the aforesaid Parish of Saint Clements Danes, in Consideration that the aforesaid *A.* had at the like Instance and Request of him *H.* before that Time sold and delivered to him *H.* divers other Goods, Wares, Merchandizes, and Things of her *A.* he the said *H.* did assume (take) upon himself, and unto the same *A.* did then and there faithfully promise, That he the said *H.* would well and faithfully pay and satisfy to the said *A.* such Sums of Money for the said Goods, Wares, Merchandizes, and Things last mentioned, as they were reasonably worth (to be sold) at the Time of the Sale and Delivery, whenever he should be afterwards thereunto required. And the same *A.* in Fact saith, That the same Goods, Wares, Merchandizes, and Things last mentioned, were at the Time of their said Sale and Delivery, reasonably worth other 20 *l.* of like lawful Money, *to wit*, at the Parish of Saint Clements Danes aforesaid; whereof the said *H.* then and there had Notice. *And whereas* the aforesaid *H.* after the first Day of May, in the Year of the Lord 1705, *to wit*, the eleventh Day of November, in the Year of the Lord 1712, at the Parish of Saint

2d Count.

Quant. val-  
bant.

3d Count.

Promissary  
Note.

Saint *Clements Danes* aforesaid, made his certain Note in Writing, with his proper Hand thereto subscribed, bearing Date the same Day and Year, by which said Note he the same *H.* did promise to pay to the same *A.* or Order, within three Months after Date of the same Note seven Pounds for Value received, by the same *H.* and by Reason of the Premisses, and also by Force of the Statute in such Case made and provided, he the same *H.* became chargeable to pay to the same *Anne*, the same Sum of Money, *to wit*, seven Pounds, according to the Tenor of that Note. And in Consideration thereof, he the same *H.* did assume (take) upon himself, and to the same *A.* did then and there faithfully promise to pay that Sum of Money, according to the Form and Effect of the Note aforesaid. *And also whereas* the aforesaid *H.* after the aforesaid first Day of *May*, in the aforesaid Year of the Lord 1705, *to wit*, on the said eleventh Day of *November*, in the Year of the Lord 1712, abovementioned, at the Parish of Saint *Clements Danes* aforesaid, did make a certain other Note of his in Writing with his proper Hand thereto subscribed, bearing Date the same Day and Year, by which said Note last mentioned, the same *H.* promised to pay within six Months after the Date of the same Note, unto the same *Anne*, or Order, seven Pounds for Value received by the same *H.* And by Reason of the Premisses, and also by Force of the Statute in such Case made and provided, he the same *H.* became chargeable to pay to the said *Anne* the same Sum of Money last mentioned,

*Attorneys.*

*To pay in three Months.*

*4th Count.  
On a Note payable in six Months.*

Attorneys.

tioned, according to the Tenor of the said other Note last mentioned. And in Consideration thereof, he the said *H.* did assume (take) upon himself; and then and there faithfully promised the said *A.* to pay her that same Sum last mentioned, according to the Form and Effect of the said Note last mentioned. Yet he the aforesaid *Henry* little regarding his said Promises and Assumptions (Undertakings) aforesaid, made as aforesaid; but contriving and fraudulently intending, craftily and subtilly to deceive and defraud the same *Anne* in this Particular, hath not paid the aforesaid several Sums of Money, or any Penny thereof to the said *A.* or in any Manner contented (satisfied) her for the same (altho' the said *H.* was on the first Day of *August*, and at several Times before and after required to do it by the same *Anne*, to wit, at Saint Clements Danes aforesaid) but he hath hitherto refused, and doth yet refuse to pay it to her, or in any Manner to content (satisfy) her for the same, to the Damage of her *Anne* forty Pounds; and thereupon she prays her Remedy.

Note, Petit Remedium, &c. is the proper Conclusion of Declarations by Bill against an Attorney, &c.

To this Declaration the Defendant pleaded the Statute of Limitations, &c. as follows.

The

*The Statutes of Limitations pleaded to a Declaration by Bill against an Attorney in C. B. with a Replication and Demurrer thereto.*

**A**ND the aforesaid *H.* in his proper Person comes and defends the Force and Injury when, where (and in what Manner, &c.) and saith, That the aforesaid *Anne* ought not to have her Action aforesaid against him, because he saith, That he the same *H.* hath not assumed (taken) upon himself at any Time within six Years next before the Day of obtaining (issuing) of the Bill of her *A.* as she the said *A.* doth above declare against him. And this he is ready to aver; whereof he prays Judgment, whether the aforesaid *A.* ought to have her Action against him, &c.

*The Statute of Limitation pleaded.*

And the aforesaid *A.* saith, That she for any Thing before alledged ought not to be precluded (barred) from having her Action aforesaid against the said *H.* because she saith, That the aforesaid *H.* within six Years before the Day of obtaining (issuing) the Bill of her *A.* to wit, on the foresaid first Day of *August*, in the Year of the Lord 1712, did at the Parish of *Saint Clements Danes* aforesaid, assume (take) upon himself in Manner and Form as she the same *A.* doth above complain against him. And this she prays may be inquired by the Country.

*Replication.*

R

And

Attorneys.

Demurrer.

And the aforesaid *H.* saith, That the aforesaid Plea of the aforesaid *A.* above by Replying pleaded, and the Matter therein contained are insufficient in the Law for the aforesaid *A. L.* to have her Action aforesaid, to be maintained against him the said *H.* thereupon. And that he the said *H.* hath no Necessity (Need) nor is he bound by the Law of the Land to answer to that Plea, in the Manner and Form pleaded. And this he is ready to aver; whereupon for Default of a Sufficiency in the Replication of the aforesaid *A.* in this Particular, the same *H.* prays Judgment; and that the aforesaid *A.* be precluded (barred) from having her Action thereof against him the said *H.*

James Selby.

Joinder in  
Demurrer.

And the aforesaid *A.* for that she hath in her Plea aforesaid above by replying pleaded, alledg'd sufficient Matter for her *Anne* to have her Action aforesaid, to be maintained against the said *H. M.* which said Matter the said *H.* doth not deny, nor any Way answer thereto, but altogether (wholly) refuses to admit that Verification. (Therefore) she the said *A.* as before, prays Judgment and her Damages, by Occasion of the Premisses to be adjudged to her.

Upon this Demurrer I am informed Judgment was given for the Defendant, an Attorney, and thereby the poor Widow lost a just Debt.

A De-

*A Declaration against an Attorney for razing a Deed whereby it became void.*

Middlesex H. S. H. Esq; complains of W. J. S. an Attorney of the Court of the Lord the King of the Bench, present here in Court; for that one T. V. (*such* a Day and Year) at D. in the County aforesaid, made a certain Bill indented, sealed with the Seal of the said T. V. for a Debt of 10 l. by which said Bill the aforesaid T. V. was held to the said S. H. in the aforesaid Sum of 10 l. to be paid to the said S. H. at a certain Day now past, which said Bill the aforesaid S. H. did (at *such* a Day and Place) deliver to the aforesaid W. to be prosecuted against the aforesaid T. V. upon an Action of Debt for the aforesaid 10 l. upon the Bill aforesaid; and the said W. in Consideration of 3 s. and 4 d. to him beforehand paid, did then and there assume and promise to prosecute the Writ aforesaid, for the aforesaid S. H. for the Debt aforesaid, in Form aforesaid. Yet the said W. afterwards, *to wit*, (*such* a Day and Year at, &c.) deceitfully, craftily, and fraudulently, the aforesaid Bill in divers Parts and Places of the same, at, &c. aforesaid, hath razed and obliterated (put on) divers Words, so that the aforesaid Bill is of no Force. And the said S. H. for that Cause could not recover his Debt aforesaid, to the Damage of the said S. H. 20 l. and thereof he prays Relief, and hath found in the Court here Pledges to prosecute his Bill aforesaid, *to wit*, A. B. and C. D. Esqrs.

In C. B.  
Against an  
Attorney for  
razing of a  
Deed, &c.

Attorneys.

*A Declaration by a Clerk of the Crown-Office against another Clerk there, for two Guineas deposited on a Wager.*

In B. R.  
By a Clerk of  
the Crown-  
Office against  
another Clerk  
there.  
Lilly 23.

Middlesex to wit,

**R.** S. Gentleman, one of the Clerks of *W. B.* Esq; Coroner and Attorney of the Lord the now King, complains, against *H. M.* another Clerk of the said *W. B.* Esq; Coroner, &c. both being present here in Court in their proper Persons, for that, *to wit*, That whereas the fore-said *H.* on the first Day of *January*, in the Year of the Lord 1731, at *Westminster*, in the County aforesaid, was indebted to the afore-said *R.* in two Pieces of Gold Coin, commonly called Guineas, of the Value of 42 *s.* of lawful Money of *Great-Britain*, for so much Money of him the said *R.* by him the said *H.* to the Use of the said *R.* before that Time, there had and received. And being so indebted, he the said *H.* in Consideration thereof, did afterwards, *to wit*, the same Day and Year, at *W.* aforesaid, in the County aforesaid, assume upon himself, and unto the said *R.* then and there faithfully promised, That he the said *H.* would well and faithfully pay and content (satisfy) unto the said *R.* the said two Pieces of coined Gold, called Guineas (or 42 *s.* of lawful Money of *Great-Britain*) when he the said *H.* should afterwards be thereunto required. And also whereas the afore-said *H.* afterwards, *to wit*, the same Day, Year, and Place, was also indebted to the same *Robert* in the Sum of 5 *l.* &c. (laying it by way of Indeb. Assump. for 5 *l.* bad

2d Count.  
On Indeb.  
Assump. for  
5 *l.*

*had and received, which see before)* Yet he *Attorneys.*  
the aforesaid *H.* not regarding his said Promises and Assumptions, but contriving and fraudulently intending, craftily and subtilly to deceive and defraud the said *R.* in this Particular, hath not hitherto paid the said two Pieces of coined Gold, called Guineas, or the said 5 *l.* or any Part or Parcel thereof to him the said *R.* altho' he the said *H.* was afterwards, *to wit*, on the 10th Day of *January*, in the Year of the Lord 1731, abovesaid, and oftentimes afterwards at *W.* in the County aforesaid, requested (required) to do it by him the said *R.* But he the said *H.* hath hitherto wholly refused, and still doth refuse to pay that to him, or in any Manner to content (satisfy) him for the same, to the Damage of the said *R.* 20 *l.* and thereof, &c.

Vide post, against a Cursitor in the Petty-Bag Office.

*A Declaration against the High-Bailiff of Westminster, for a false Return of a Fieri Facias.*

*Middlesex to wit.* **R.** A. complains of *J. H.* *In B. R.*  
*Esq;* Bailiff of the *For false Return of a Fieri Facias.*  
Liberty of the Dean and Chapter of the Collegiate Church of the blessed *Peter at Westminster*, in the said County of *Middlesex*, in Custody of, &c. for that, *to wit*, that whereas the same *R.* erewhile (heretofore) *to wit*, in *Trinity* Term last past (or in *such* a Year of the King, &c.) in the Court of the said Lord the King, before the King himself (the same Court being (then) at *Westminster* in the said County of *M.*) recovered by the Consideration  
R 3 tion

**Officers.** tion (Judgment) of the same Court against one *W. S.* of the Parish of *St. James, Westminster*, in the County of *M.* Gentleman, 55 *l.* of Debt, and also 30 *s.* for his Damages, which he had sustained, as well by Occasion of the Detention of that Debt, as for his Charges and Costs laid out by him about his Suit in that Particular, whereof (he the said *W.*) was convicted. And afterwards, *to wit*, on the 25th Day of *July*, in the same Year, he the said *R.* for the obtaining of the Execution of the said Debt and Damages, prosecuted out of the same Court of the said Lord the now King, before the King himself (the same Court (then) being also at *Westminster* in the said County of *Middlesex*) a certain Writ of him the Lord the King of *Fieri Facias*, (Cause to be made) directed to the Sheriff of the said County of *Middlesex*; by which said Writ the said Lord the now King, had commanded the said Sheriff, That he should cause to be made of the Goods and Chattels of the said *W.* within his (the said Sheriff's) Bailiwick the said 55 *l.* of Debt, and also the 30 *s.* for the Damages aforesaid. And that he should have those Monies before the said Lord the King at *Westminster*, on *Friday* next, after three Weeks of *St. Michael*, then next following, to be render'd to him the said *R.* of the Debt and Damages aforesaid; which said Writ was afterwards, and before the Return thereof, *to wit*, on the 17th Day of *August*, in *such* a Year of the Reign of the said now King, at the Parish of *St. Martins Le Grand*, in the said County of *Middlesex*, delivered unto *W. W. Knt.* and *J. B. Knt.* being the then Sheriff

That the Plaintiff had recover'd 55 *l.*

And sued out a *Fieri Facias*.

And delivered it to the Sheriff.

Sheriff\* of the said County of *Middlesex*, to be executed in due Form of Law, which said Sheriff did then and there, *to wit*, on the same 17th Day of *August*, in the fifth Year aforesaid, in the Parish and County aforesaid, at the Request of him *R.* make his Warrant in Writing, under the Seal of his said Office of Sheriff, of and upon the aforesaid Writ of *Fieri Facias*; and directed the same Warrant to the Bailiff of the Liberty of the Dean and Chapter of the Collegiate Church of the blessed *Peter* at *Westminster* in the County aforesaid; which said Bailiff of that Liberty then had, and yet hath the full Execution and Return of all Warrants, Writs, and Mandates, within the same Liberty; by which said Warrant directed and delivered to the Bailiff, he the said Sheriff of the County aforesaid, did then and there by Virtue of the said Writ of the said Lord the King, so directed to the said Sheriff, command the said Bailiff of the said Liberty, That he should cause to be made of the Goods and Chattels of the said *W.* within the Bailiwick of him the said Bailiff, the said 55 *l.* of Debt, which he the said *R.* had recover'd against the said *W.* and also 30 *s.* for the Damages of the said *R.* whereof he the said *W.* was convicted; so that he should have that Money before the said Lord the now King, at *Westminster*, on the aforesaid *Friday* next after three Weeks of *St. Michael*, to be render'd to the said *R.* of the Debt and Damages aforesaid; which said Warrant he the said *R.* afterwards and before the Return thereof, *to wit*, on the 18th Day of *August*, in the fifth Year aforesaid, at *Westminster* aforesaid, did deliver to the

**Officers.**

\* Note, both are but one Sheriff for

*Middlesex, Who sent his Warrant to the High-Bailiff.*

Mandavi Ballavi.

**Officers.**

*Who levied  
the Debt, &c.*

*But to de-  
fraud the  
Plaintiff re-  
turned Nulla  
Bona.*

*Averment.*

aforesaid *J. H.* then and yet Bailiff of the Liberty aforesaid, and then and yet having the Execution and Return of *all* Precepts, Writs, and Mandantes (*Quere* of all Warrants) within the same Liberty, to be executed in due Form of Law: By Virtue of which said Warrant, he the said Bailiff of the said Liberty, afterwards and before the Return of the same Warrant, *to wit*, on the 20th Day of *August*, in the fifth Year aforesaid, at the Parish aforesaid, and within his said Liberty, did cause to be made several Goods and Chattels of him the said *W.* to the Value of the Debt and Damages aforesaid. Yet he the said *J. H.* being Bailiff of the Liberty aforesaid, did afterwards, at the Return of the said Writ, *to wit*, on the aforesaid *Friday* next after three Weeks of *St. Michael*, before the King himself, at *Westminster* aforesaid, in the said County of *Middlesex*, falsely, deceitfully, and in Deceit of the said Court of the Lord the now King, before the King himself, and to defraud him the said *R.* of his said Debt and Damages, return to the said Sheriff of and upon the said Warrant, That the said *W.* had no Goods or Chattels within his Bailiwick, whereof he could make the said Debt and Damages, or any Parcel thereof, as he was commanded (to do) by the said Warrant; whereas in Truth and in Fact he the said *J. H.* as Bailiff of the said Liberty, had within the same Liberty, *to wit*, at the Parish aforesaid, in the County aforesaid, by Virtue of the said Warrant made as aforesaid, and directed and delivered to him the said *J. H.* as Bailiff of the same Liberty, made several Goods and Chattels, the Property of the

the said *W. S.* to the Value of the Debt and Damages aforesaid; whereof he the said *R.* saith, That he is the worse, and hath Damage to the Value of 60 *l.* and thereof he brings, &c.

Officers.

*A Declaration against a Chief-Bailiff of the Dutchy Liberties on the Statute of 8 Ann. For the better Security of Rents, and preventing Frauds by Tenants.*

*Portfolk to wit.* **F**. *W.* late of *C.* in the County aforesaid, Esq; was attached to answer to *R. Palgrave*, Bart. Administrator of the Goods and Chattels, which were of the Lady *Anne Palgrave*, his late Mother deceased, who dyed Intestate, &c. of a Plea of Trespass on the Case, and whereof he the same *R.* by *T. Hare*, his Attorney complains, That whereas in a Statute made in the Parliament of the Lady *Anne*, late Queen of Great Britain, &c. held at *Westminster*, in the County of *M.* on the 8th Day of *July*, in the 8th Year of the said late Queen, it was among other Things, enacted by Authority of the same Parliament. That from and after the first Day of *May*, which should be in the Year of the Lord 1710. No Goods or Chattels whatsoever, should be taken, &c. (i. e. reciting the Clause, That no Goods, &c. are to be taken in Execution, unless the Plaintiff before he remove pay to the Landlord one Years Rent) And if the Arrears of the Rent shall exceed one Year, then the Party at whose Suit the Execution was, paying to the Landlord or his Bailiff the Rent of one Year, may

*In C.B. Against a High-Bailiff of the Dutchy on the Stat. 8 Annæ. For better securing Rents, &c.*

*Recital of the Clause in the Statute. See the Act.*

**Officers.**

*A Lease at Will.*

**Habend.**

**Reddend.**

*Entry of the Tenant, and*

*occupying for two Years and one Year's Rent Arrear.*

may proceed in the Execution of his Judgment as he might have done before the making of the said Act, and the Sheriff or other Officer have Power, and are required by the said Act to levy and pay to the Plaintiff, as well the Money so paid as aforesaid for Rent, as the Money upon the said Execution. As by the said Statute lately made and provided, it doth among other Things more fully appear. And whereas the said Lady *A. P.* after the making of the said Act, to wit, on the 16th Day of January 1712, had demised, and to Farm, Letten to one *D. C.* two Messuages, and 120 Acres of Land, with the Appurtenances, situate, lying, and being in *N. T.* and *B.* in the said County of *N.* to have and to occupy to the said *D.* and his Assigns from the Feast of St. Michael the Archangel then last past, to the End and Term of one whole Year from thence next following, and fully to be compleat and ended, and so from Year to Year, as long as it should please both Parties, rendering therefore yearly, as long as he the said *D.* should have or occupy the said two Messuages, and 120 Acres of Land (with the Appurtenances) unto the said Lady *A. P.* her Heirs and Assigns the Rent or Sum of 70*l.* of lawful Money of Great Britain, to be paid at the Feasts, &c. by equal Portions. By Virtue of which said Demise he the said *D.* entred into the said two Messuages, &c. with the Appurtenances, and was thereof possessed, and occupied the same for the Space of two Years, and 70*l.* of the said Rent, being the Rent for one Year of the said Premisses, was due, and in Arrear, and unpaid to the said Lady *A. P.* at the Feast of St. Michael the Arch-

Arch-angel, in the Year of the Lord 1713. And whereas the said *F. W.* afterwards, to wit, on the 6th Day of *October*, in the 12th Year of the Reign of the said Lady *Anne* late Queen of *Great Britain*, at *N.* aforesaid, he the said *F. W.* being then and still Chief Bailiff of the Dutchy of *Lancaster*, in the County aforesaid, by Virtue and Pretext of a certain Writ of *Fieri Facias* (cause to be made) of the Goods and Chattels of him *D.* prosecuted at the Suit of one *E. B.* out of the Court of the said late Queen of the Bench, (the same Court being then at *Westminster*, in the County of *Middlesex*) against the said *D. C.* upon a Judgment, before that Time had and obtained against him the said *D.* in same Court of the Bench, and then directed to the Sheriff of the said County of *Norfolk*, and by Virtue of a Warrant in Writing by the said Sheriff sealed with his Seal, and directed to the said *F. W.* he the said *F.* afterwards, to wit, on the 6th Day of *October*, in the Year aforesaid, at *N.* aforesaid, and within the Liberty aforesaid, he the same *Francis* being then Chief-Bailiff as aforesaid, took the Goods and Chattels of the said *D. C.* being then in and upon the Messuages and Lands aforesaid, to the Value of 200 *l.* and the said *R. P.* further saith, That after the taking, and before the Amoval (Removal) of the said Goods and Chattels by Pretext of the said Warrant, to wit, the same Day, Year and Place last mentioned (at *N.* aforesaid) she the said Lady *A. P.* in her Life, gave to the said *R.* Notice of the said Rent, so due to her as aforesaid, and she the said Lady *Anne*, then and there demanded of the same *F.* the Rent aforesaid, according

Officers.

And the Defendant by Virtue of a Warrant on a *Fi. Fa.* took the Goods of the Tenants on the Premises, to 200 *l.* Value.

Notice.

Demand,

**Officers.** according to the Form of the Statute aforesaid, out of the said Goods and Chattles (so taken by the said *F.* in Execution as aforesaid) But the said *F.* then and there refused to pay the said Rent; and so he the said *F.* not regarding the Statute aforesaid, nor any Way fearing the Penalty therein contained, but contriving and fraudulently intending the said *A.* in her Life (time) and the said *R.* since her Death craftily and subtilly to deceive and defraud in this Particular, hath not paid, or any way satisfied the said 70 *l.* for the said Rent, for one whole Year, ended at the said Feast of St. *Michael* the Archangel, in the Year of the Lord 1713, aforesaid, so being in Arrear, and unpaid to the said *A.* as aforesaid, altho' he was (at the Day, Year and Place, and often afterwards) thereto requested by the said *A.* But the said Goods and Chattels so as aforesaid, taken by the said *F.* by Pretext of the said Warrant as aforesaid; he the said *F.* afterwards, *to wit*, on the said sixth Day of *October*, in the Twelfth Year aforesaid, did take, carry away, and remove off and from the Messuages and Lands aforesaid, against the Form of the said Statute in that Case made and provided the said 70 *l.* for the one Years Rent aforesaid, being then due and unpaid as aforesaid, and the same or any Part thereof in no wise satisfied. And he the same *R.* further saith, That he the said *F.* hath not paid the said Rent to the said *A.* in her Life-time, nor since her Death to the said *R.* to whom the Administration of all and singular the Goods and Chattels, Rights and Credits, which were of her the said *A.* at the Time of her Death, *to wit*, on the

*And Refusal.*

*Breach of the Statute.*

*Administration granted to the Plaintiff.*

11th Day of *June*, in the Year of the Lord 1716, at N. aforesaid, were after the Death of the said *A.* (granted) committed in due Form of Law, by T. T. Professor of Divinity, (the lawfully constituted Official of the Lord *Charles* Bishop of *Norwich*.) But the said 70*l.* he the said *F.* wholly refused to pay or satisfy the same to the said *A.* in her Lifetime, and still doth refuse to pay or satisfy the same to the said *R.* to the Damage of him *R.* 100*l.* and thereof he brings his Suit, (&c.) And he also brings here into Court the said Letters of Administration, which do attest (prove) the committing of the said Administration unto him the said *R.* in the Form aforesaid.

Officers.

Profert of the  
Letters of  
Administra-  
tion.

*A Declaration against a Sheriff for not arresting the Party on Mesne Process.*

Suffer to wit. **D.** T. Widow, complains of *In B. R.*  
**D.** F. T. Esq, late Sheriff of *Against a*  
 the County aforesaid, in Custody of the Mar- *Sheriff for not*  
 shal of the *Marshalsea* of the Lord the now *arresting on*  
 King, before the King himself, for that, to *Mesne Pro-*  
 wit, That whereas one *J. W.* on the 10th *cess, &c. See*  
 Day of *May*, in the 5th Year of the now *Lilly 60.*  
 Lord the King, at *P.* in the County aforesaid,  
 was indebted to the said *D.* in 200*l.* of  
 lawful Money of *Great Britain*, for divers  
 Goods, Wares and Merchandizes, by her the  
 said *D.* unto the said *J.* at the Special In-  
 stance and Request of the said *J.* before that  
 Time sold and delivered, and the foresaid *J.*  
 being so indebted then and there, in Consi-  
 deration thereof, assumed upon himself, and  
 unto

**Officers.**

*That one J. W.  
was indebted  
to the Plain-  
tiff.*

*Who sued out  
an Alias  
Capias.*

unto the said *D.* then and there faithfully promised, That he the said *J.* would well and faithfully pay and content (satisfy) the said 200 *l.* unto the said *D.* when he should be thereto afterwards required. And in Fact, she the same *D.* saith, that the said *J.* tho' he was afterwards often required to do it, hath not yet paid the said 200 *l.* to the said *D.* but hath altogether (wholly) refused to pay it to her. And also whereas she the foresaid *D.* for recovery of the said 200 *l.* so due and unpaid by the said *J.* to the said *D.* as aforesaid, did afterwards, *to wit*, in *Hillary* Term, in the sixth Year of the said Lord the now King, at *Westminster*, in the County of *Middlesex*, prosecute a certain Writ of the said Lord the now King, of *Alias Capias* (erewhile Take) directed to the said *F.* then Sheriff of the said County of *S.* and issuing out of the Court of the said Lord the now King, before the King himself, (the same Court then being at *Westminster*, in the said County of *Middlesex*) by which said Writ of *Alias Capias* the said Lord the now King, commanded the said Sheriff of *S.* (as it had been before (erewhile) commanded to the said then Sheriff of *S.*) That he should take the said *J. W.* if he might be found in his Bailiwick, and keep him safely, so that he had his Body before the said Lord the now King at *Westminster*, on *Wednesday* next after fifteen Days of *Easter* then next following, to answer to the said *D.* of a Plea of *Trespas*; and also of a Bill of her the said *D.* against him the said *J. W.* for 200 *l.* upon an Assumption (Promise) to be exhibited, according to the Custom of the Court of the said Lord the now King, before the King himself,

himself, and that the said Sheriff should have then there that Writ, which said Writ of the said Lord the now King of *Alias Capias*, she the same *Dorothy* afterwards, and before the Return thereof, *to wit*, on the 9th Day of *April*, in the 6th Year of the Lord the now King, at *P.* aforesaid, in the said County of *S.* delivered to the said *F. P.* being then Sheriff of the County of *S.* to be executed in due Form of Law, which said Writ of *Alias Capias*, so prosecuted in the Form aforesaid, she the said *D.* prosecuted with intent that he the said *J. W.* should by Virtue of the same Writ be taken and arrested, and that the aforesaid *F. T.* the said Sheriff of the County aforesaid, should have the Body of the said *J.* before the Lord the now King at *Westminster*, so that at the said Day of the Return of the same Writ he the said *J.* might be committed to the Marshal of the *Marshallsea* of the Court of the Lord the now King, before the King himself, according to the Custom of the said Court; and *so that* the said *J.* before he should be at large, out of such Custody might be compelled to put in two sufficient (Manucaptors) Bail, at the Suit of the said *D.* to the Bill of the foresaid *D.* against him the said *J.* for the said 200*l.* upon the Assumption (Promise) above-mentioned, to be exhibited in the said Court, according to the Custom of the same Court. *And whereas* afterwards, and before the Return of the said Writ of *Alias Capias*, *to wit*, on the said 9th Day of *April*, in the sixth Year aforesaid, at *P.* aforesaid, in the said County of *S.* he the said *J.* was in the Presence of the said *F.* the said *F.* being then Sheriff

**Officers.**

*And delivered it to the Sheriff.*

*Note.*

*And required him to arrest the Party (being in his Presence.)*

*Officers.*

*Which the  
Sheriff neg-  
lected, &c.*

*And had not  
the Body at  
the Return.*

*And so the  
Defendant  
escaped, &c.*

Sheriff of the same County of *S.* and she the  
aforesaid *D.* did then and there shew the said  
*J. W.* unto him the said *F.* and then and  
there requested (required) the said *F.* to take  
and arrest him the said *J.* according to the  
Exigence (Demand) of the said Writ; yet he  
the said *F.* not regarding his Office of Sheriff  
in the true and just Execution thereof, but  
contriving and fraudulently intending to hin-  
der (deprive) her of her proper Remedy for  
Recovery of the said 200 *l.* Debt at the Day,  
Year and Place abovesaid, did not take and ar-  
rest him the said *J.* nor had his Body before  
the said Lord the now King, at *Westminster*, at  
the said Day of the Return of the said Writ  
of *Alias Capias*, nor at any Time afterwards,  
or before (the said Return.) But upon the said  
*Wednesday* next after fifteen Days of *Easter*  
above-mentioned, at *Westminster* abovesaid, in  
the said County of *Middlesex*, did voluntarily  
and fraudulently neglect to have the Body  
of him the said *J.* there, according to the  
Exigence (Demand) of the said Writ of *Alias*  
*Capias* (altho' he the said *F.* might most easily  
have had the Body of the said *J.* there at  
that Day) and according to the Duty of his Of-  
fice of Sheriff of the County abovesaid, where-  
by (by which Means) he the said *J.* was not  
committed to the said Marshal of the *Mar-*  
*shalsea*, nor put in any Manucaptors (Bail)  
at the Suit of the said *D.* so that the said *D.*  
could not exhibit her Bill against him the  
said *J.* for the said 200 *l.* upon the said Pro-  
mise and Assumption in the said Court of the  
Lord the now King, before the King himself,  
according to the Custom of the same Court.  
And he the foresaid *J.* immediately after  
the

the said Day of the Return of the said Writ, *Sheriffs.*  
 escaped and hid, and absented (absconded)  
 and always afterwards hitherto hath hid and  
 absconded, and eloiigned himself, and escaped  
 into Places altogether unknown to the said  
 D. \* so that she the same D. is (thereby) *\*Quære what*  
 wholly hindered and defrauded of her Remedy *Return the*  
 for the Recovery of the foresaid 200 l. To *Sheriff made*  
 the Damage of her the said D. 200 l. &c. *to the Writ,*  
*Note; in this Case on Not guilty pleaded, the*  
*Plaintiff had a Verdict, and recovered all her*  
*Debt, &c. which was paid her by the Sheriff ac-*  
*cordingly.*

*A Declaration against a Sheriff for not*  
*taking sufficient Bail in a Replevin.*

*Middlesex to wit.* J. S. of, &c. Esq; complains *In B. R.*  
 J. of S. G. Baronet, and *Against a*  
 R. B. Knt. late Sheriff of the said County *Sheriff not*  
 of *Middlesex*, For that, to wit, That whereas *taking suffi-*  
 he the said J. on the 19th Day of October, *cient Bail in*  
 in the Year of the Lord 1730, at the Parish *Replevin.*  
 of St. Clements Danes, in the said County of *See Lilly's*  
*Middlesex*, was possessed of one Bed, one Bed- *Ent. 37.*  
 stead, one Pillow, six Curtains, six Vallance  
 (&c. reciting all the Goods particularly) as  
 his own proper Goods and Chattels. And *The Plaintiff*  
 also whereas they the foresaid S. and R. the *possessed of*  
 same Day and Year, and long before and *Goods in*  
 afterwards were Sheriff of the same County *Middlesex.*  
 of *Middlesex*, and the foresaid J. being then  
 and there so possessed of the same Goods and  
 Chattels in the Form aforesaid, and they  
 the said S. and R. being so as aforesaid, Sheriff  
 of the said County not regarding the Duty  
 S of

**Sheriffs.**

*The Defen-  
dants being  
Sheriff on a  
pretended  
Plaint by a  
third Person  
delivered  
them to him.  
Sans sufficient  
Sureties.*

*Removal of  
the Plaint  
into B. R.*

of their said Office, but contriving and fraudulently intending to deceive and defraud the said *J.* of his said Goods and Chattels, on the same Day and Year abovesaid, in the said Parish of *St. Clements Danes*, in the said County of *Middlesex*, by Colour of their said Office, the said Goods and Chattels being then and there found, did at the complaint (Plaint) of one *W. P.* pretending the same Goods to be the proper Goods and Chattels of the said *W. P.* and unto the same *W. P.* of Right to belong and appertain, and that he the said *J.* had unjustly taken and detained the same Goods and Chattels, against Gages and Pledges (given) caused the said Goods and Chattels to be Replevyed from the Possession of the said *J. S.* and caused and procured the same Goods and Chattels to be delivered to the said *W. P.* without sufficient Gages and Pledges, or any other sufficient Security had or taken for prosecuting the said Plaint of him the said *W. P.* against the said *J. S.* for the taking and unjust detaining of the said Goods and Chattels, and for making a Return of the same Goods and Chattels to the said *J. S.* if the Return of them should be adjudged to the said *J. S.* as by the Law and Custom of *England*, and the Duty of his said Office he ought to have done, which said Plaint was afterwards by due Process (Course) of Law removed into the Court of the said Lord the now King, before the King himself, *wheresoever he should be in England.* And also whereas afterwards, *to wit*, in *Easter Term*, in *such a Year* of the said Lord the now King, he the said *J. S.* was thereupon summoned into the Court of the said Lord the now King, before

before the King himself, at *Westminster*, to answer to the said *W. P.* of a Plea, why he took the said Goods and Chattels; and thereupon there was such a Process (Proceeding) That it was considered (adjudged) by the same Court at *Westminster*, That the foresaid *J. S.* should have a Return of the said Goods and Chattels to be detained by him irreplevisable for ever. Which said Judgment as yet remains and exists in its full Strength and Force, no way revoked or annulled; and that the Goods and Chattels aforesaid, which by Occasion of the said Replevin were delivered to the said *W. P.* (by the said Sheriff) as aforesaid, are eloigned to strange and unknown Places; so that they cannot be returned or delivered unto him the said *J.* and the foresaid *J.* by that Occasion hath wholly lost and is (entirely) deprived of his said Goods without Remedy; to the Damage of him the said *J.* 200 l. &c.

*Declaration there and Judgment for a Return irreplevin. The Goods eloigned.*

*See other Declarations, &c. for and against Sheriffs, viz.*

By Sheriffs. { For Escapes, Instit. Leg. 274 to 401. 439, &c.  
For Rescues. Ibid. 395, to 401. 175. 314, &c.

Against Sheriffs. { For not arresting Ibid. 49 to 51.  
Permitting Escapes Ibid. 438.  
For False Returns, &c. Ibid. 305, &c.

**Bailiffs.**

In C. B.  
Against a Bailiff  
for refusing Bail.  
See Lilly 71.  
On the Stat.  
23 H. 6. c. 10.

*A Declaration against a Bailiff, for refusing good Bail when tender'd.*

**Offer to wit.** J. M. late of C. in the said County, Yeoman, was attached to answer to T. P. of a Plea of Trespass on the Case; and whereof he the same T. by J. P. his Attorney, complains, That whereas by a certain Act made in a Parliament of the Lord Henry the Sixth, late King of England, held at Westminster in the County of Middlesex, on the 25th Day of February, in the 23d Year of his Reign, it was among other Things enacted, by Authority of the same Parliament, That Sheriffs and Under-Sheriffs, and their Clerks, Coroners, and Stewards, or Bailiffs of Franchises, Sergeants, Bailiffs and Keepers of Prisons, shall let out of Prison all Manner of Persons, by them or any of them arrested, or being in their Custody by Force of any Writ, Bill, or Warrant, in any Action Person (2. if not mixt and real) or by Cause of Indictment, by Trespass, upon reasonable Sureties of sufficient Persons, having sufficient within the Counties where such Persons be let to Bail or Mainprise, to keep their Days in such Place as the said Writs, Bills, or Warrants shall require. (Note, the Statute excepts such as are in Custody by Condemnation, Execution, Capias Ut legat. or Excommunication, Surety of the Peace, and such as are committed by the special Commandment of any Justices, and also Vagabonds refusing to serve according to the Statute of Labourers) As by the said Statute may among other Things more fully and certainly

tainly appear. After the publishing of which  
 said Act, *to wit*, on the 22d Day of *June*, in  
 the sixth Year of the Lord *George the Second*  
 now King of *Great-Britain*, one *T. H.* the  
 Elder, prosecuted (sued) out of the Court of  
 him the said Lord the King, of the Bench  
 here, *to wit*, at *Westminster*, a certain Writ of  
 him the said Lord the King, of *Capias* to an-  
 swer towards the said *T.* and other Persons  
 named in the said Writ, directed to the then  
 Sheriff of the said County of *E.* by which  
 said Writ the same Lord the King commanded  
 the said Sheriff, That he should take the said  
*T.* and the other Persons, if they should be  
 found in his Bailiwick, and keep them safe-  
 ly, so that he might have their Bodies before  
 the Justices of the said Lord the King, of  
 the Bench, at *Westminster*, *aforsaid*, in the  
 Octaves of *St. Martin* then next following,  
 to answer to the *aforsaid T. H.* of a Plea,  
 That with Force and Arms he had taken and  
 carried away 20 Bushels of the Oysters of  
 him *T.* of the Value of 20 *l.* at the Parish  
 of *W. and L.* *aforsaid*, there lately found;  
 and other Enormities had done to him, to the  
 great Damage of him *T.* and against the  
 Peace of the said Lord the now King. And  
 that the said Sheriff should then have there  
 that Writ, which said Writ he the said *T.*  
 afterwards and before the Return thereof, *to*  
*wit*, on the same 16th Day of *August*, in the  
 said sixth Year of the Reign of the said now  
 King, at *H.* in the said County of *E.* deli-  
 vered to one *W. P.* Esq; the then Sheriff of  
 the said County, to be executed in Form of  
 Law; which said Sheriff for the Execution  
 of the said Writ, did afterwards, *to wit*, on

Bailiffs.

A Capias sued  
 out of C. B.

For Trespass  
 in taking Oy-  
 sters.

And deliver'd  
 to the Sheriff.

## Declarations, &amp;c.

**Bailiffs.** the same 16th Day of *August*, in the said sixth Year, at *H.* aforesaid, make his certain Warrant in Writing, sealed with the Seal of his Office of Sheriff of the said County of *S.* directed unto the Bailiffs of the Hundreds of *L. T. W.* and *R.* By which said Warrant he the said Sheriff commanded the said Bailiffs of the said Hundreds, that they should take the same *T.* and the said other Persons, if they could be found, &c. and keep them safely, so that he had their Bodies before the Justices of the said Lord the now King, of the said Bench at *Westminster* aforesaid, to answer in the Form aforesaid, which said Warrant afterwards and before the Return of the same, *to wit*, on the last Day of *August*, in the sixth Year aforesaid, *to wit*, at *H.* aforesaid, was delivered to the said *J.* (he being then and continually from the Time of the making of the said Warrant, to the Time of the Return of the same Bailiff of the said Hundred of *W.*) to be executed by him in due Form of Law. By Virtue of which said Warrant, he the said *J.* being Bailiff of the said Hundred of *W.* as aforesaid, afterwards and before the Return of the same Writ, *to wit*, on the first Day of *September*, in the sixth Year of the Reign of the Lord the now King aforesaid, at *H.* aforesaid, did take and arrest him the said *T.* And he the said *T.* in Fact saith, That immediately after the said taking and arresting of him the said *T.* he the said *T.* did offer to the said *J.* reasonable Pledges and Sureties of sufficient Persons, *to wit*, *John Doe* of, &c. in the County aforesaid, Gentleman, and *Richard Jones* of, &c. in the same County, Gentleman, then and yet being sufficient Persons,

*The Sheriffs  
Warrant to  
the Bailiff of  
the Hundred.*

*Averment of  
Bail tender'd.*

*Their Names.*

Persons, and having, and each of them then (and still) having sufficient within the same County for securing of his the said *T*'s Appearance, according to the Demand of the said Writ, according to the Form of the Statute. Yet he the said *J*. not regarding the said Statute, but contriving and maliciously intending unjustly to grieve and oppress the said *T*. in this Particular, did then and there altogether refuse to accept of his said Pledges (Sureties) and without Delay carried him the said *T*. to the common Gaol of the said now King, for the County aforesaid, at *Chelmsford*, and detained him there in the same Gaol, a Prisoner under the Custody of the said *W. P.* the then Sheriff of the County aforesaid, until he had paid a Fine of 40 *s.* to the said *J*. against the Form of the Statute aforesaid; whereof he saith, that he is the worse, and hath Damage to the Value of 40 *l.* &c.

*But the Bailiff refused them, and carried him to Gaol.*

*For other Actions, &c. by and against Attorneys, Clerks, &c. see before, Page 234, &c. and hereafter Title Debt, &c. See also Instit. Leg. 23, &c. 306, &c. 438, &c.*

*Petty-Bag*

*The Entry of a Declaration, Issue, and Nisi Prius Record, in an Action against a Cursitor, brought in the Petty-Bag Office in Chancery.*

*Pleas before the Lord the now King in his Chancery at Westminster, in the County of Middlesex, in Michaelmas Term, in the sixth Year of the Reign of the Lord George the Second, by the Grace of God, King of Great-Britain, France, and Ireland, Defender of the Faith, &c.*

*In Chancery in the Petty-Bag Office, against a Cursitor.  
See Lilly 88.*

*Ind. Assump. For Goods and Wares sold.*

*And for Work and Labour done.*

London to wit. **R.** T. by *W. Smith, Esq;* his Attorney, complains against *J. T. Esq;* one of the Cursitors of the Court of Chancery of the Lord the now King present here in Court in his proper Person; for that, to wit, That whereas he the said *J.* was on the 17th Day of *October*, in the sixth Year of the Lord the now King of Great-Britain aforesaid, at *London* aforesaid, to wit, in the Parish of *St. Mary of the Arches (Bows)* in the Ward of *Cheap*, indebted to the said *R.* in 35 *l.* of lawful Money of *Great-Britain*, as well for divers Goods, Wares, and Merchandizes of him *R.* by him the said *R.* at the special Instance and Request of him *J.* before that Time sold and delivered as for Work and Labour (shewing what) by him the said *R.* for the same *J.* at the like special

cial Instance and Request of him J. before that Time done and perform'd. And being so indebted, he the said J. afterwards, *to wit*, the same Day and Year, at London aforesaid, in the Parish and Ward aforesaid, did assume (take) upon himself, and unto the said R. then and there faithfully promised, that he the said J. would well and faithfully pay and satisfy the said 35*l*. unto the said R. when he should be afterwards thereto required, with another Count by Way of *Quantum valebant* for the like Goods and Labour, with the usual Averments (*the Form whereof see before*). Yet he the said J. S. contriving, &c. then refused, and still refuses to pay, &c. to the Damage of him R. 100*l*. and thereof he prays Remedy, &c. Pledges of the Prosecution are J. Doe and R. Roe; whereupon a Day is given by the Court here to the said J. until Monday next after a Month of St. Michael in this same Term, to make his Answer to the said Bill of him the said R. and the same Day is given to the said R. to be here, &c. At which Day before the said Lord the now King, in his said Chancery, *to wit*, at Westminster aforesaid, came as well the said R. by his Attorney aforesaid, as the aforesaid J. in his proper Person; and the said R. prays, that the said J. may answer to his Bill aforesaid. And the aforesaid J. in his proper Person comes and defends the Force and Injury, when, where, &c. and saith, That he did not assume upon himself in Manner and Form, as the said R. doth above complain against him; and of this he puts himself upon the Country; and thereof he the said R. in like Manner, &c. and thereupon he the said R.

Petty-Bag

Quant. val:

Impar lance.

Plea of Non Assump.

prays

**Petty-Bag**

*A Venire awarded, and Day given to the Parties, in B. R.*

*Quere, If not Middlesex.*

*Note.*

prays a Writ of the said Lord the now King, of *Venire Facias* (*cause to come*) to be directed to the said Sheriff of *London*, to try the aforesaid Issue between the said Parties, joined in the Form aforesaid; and it is granted to him by the said Court here, &c. (*Returnable in the Court of the said Lord the now King, before the King himself*) The same Day is given to the Parties aforesaid, to be before the said now Lord the King, until the *Monday* next after the Octaves of *St. Hillary* next coming, wheresoever he shall then be in *England*, to do and receive what shall be just in the Premises. And it is commanded to the Sheriff of *London* aforesaid, That he shall cause to come before the said Lord the now King, at that Day twelve free and lawful Men of the City of *London* aforesaid; each of which hath 10 *l.* in Lands, Tenements, or Hereditaments, by the Year at the least; and by whom the Truth of the Matter (in Question) may better be known, and who are by no Affinity related to either the said *R.* or the said *J.* to recognize more fully by their Oath the Truth of and concerning the said Premises.

*For other Proceedings in the Petty-Bag, see Curs. Canc. 419, 490 to 502.*

*Pleas*

Pleas before the Lord the King at Westminster, of the Term of St. Hillary, in sixth Year of the Reign of the Lord George the Second, now King of Great-Britain, &c.

Middlesex to wit. **I**T is to be remember'd, *The Nisi Pri-*  
That Peter King, Baron of *us Record*  
O. and Lord Chancellor of Great-Britain, *thereupon.*  
on Monday next after the Octaves of Saint *See Lilly 89.*  
Hillary in this same Term, before the Lord  
the King at Westminster, did with his own  
proper Hands deliver here in the Court of  
the said Lord the King, a certain Record had  
before the said Lord the King in his Chan-  
cery at Westminster, in the County of Mid-  
dlesex, in these Words, to wit, Pleas before  
the Lord the now King in his Chancery, at  
Westminster in the County of Middlesex, in  
the sixth Year of the Reign of the Lord  
George the Second, by the Grace of God King  
of Great-Britain, France, and Ireland, De-  
fender of the Faith, &c.

London to wit. **R**. T. by W. Smith his At-  
torney, complains a-  
gainst J. S. (*&c. reciting the whole Issue, &c.*  
*verbatim, as before, to the Word Premisses*)  
At which Day before the Lord the King, at  
Westminster, came as well the said R. T. by *Venire.*  
J. S. his Attorney, as the said J. S. in his  
proper Person, and the Sheriff of London  
aforesaid, to wit, F. G. Knt. and L. M. Esq;  
returned the Writ of the said Lord the King,  
of

*Wetty Bag*

*And Distringas.*

*The Postea.  
See before.*

*Note.*

of *Venire Facias*, directed to them in the Form aforesaid, in all Things served and executed, together with a Pannel of the Jurors Names annexed to the same Writ, none of whom do appear. Therefore it is commanded to the said Sheriff of *London*, That he distrein the Jurors aforesaid, by all their Lands, &c. and that of the Issues, &c. so that he may have their Bodies before the Lord the King, at *Westminster*, on *Monday* next after the Octaves of the Purification of the blessed *Mary*, or before *F. P. Knt.* one of the Justices of the Lord the King, assigned to hold Pleas in the Court of the Lord the King, before the King himself. If before, on *Saturday* next after the said Purification of the blessed *Mary* should come to the *Guildball, London*, for Default of the Jurors by Form of the Statute; therefore let the Sheriff have their Bodies, &c. The same Day is given to the Parties aforesaid to be there. Afterwards at the Day and Place within contain'd, before *F. P. Knt.* a Justice of the Lord the King within written, there being associated unto him *J. T. Gentleman*, by Form of the Statute, came the within named *R. T.* by his Attorney within contained. And the within written *J. S.* altho' at the same Day he was solemnly demanded, did not come, but made Default. Therefore let the Jury, whereof Mention is within made, be taken against him by Default. And the Jurors of the Jury, whereof Mention is within made, being demanded, came (*i. e.* did appear) and being elected, try'd, and sworn to say the Truth, of and concerning the Matter in Issue within contained, do say upon their Oath, That

# On an ISSUE out of

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*Chancery*

That the within named *J. S.* did assume upon himself (promise) in Manner and Form, as the said *R. T.* doth within declare against him; and they do assess the Damages of him *R. T.* by Occasion of the not performing of that Assumption, besides his Charges and Costs laid out by him about his Suit in this Particular, to 34 *l.* 10 *s.* 11 *d.* and for those Charges and Costs to 53 *s.* 4 *d.* therefore, &c.

18 Feb. 1732.

1 *l.* 3 *s.* 4 *d.*

For Costs of Increase 11 *s.* 9 *d.*

For Damages in the Whole 18 10 0.

*See the Form of the Venire and Distringas in this Case, Lilly's Entr. 90.*

*A Declaration on an Issue directed out of Chancery, being against one of the Clerks of the chief Clerks in B. R. to settle a Difference between an Executor and a Donee, concerning Tallies, &c.*

London to wit. **W** B. Gentleman, Executor of the Testament and Last Will of *V. B.* Esq; deceased, of *H. W.* Gentleman, one of the Clerks of *Edward Ventris*, Esq; Chief Clerk of the Lord the King, for inrolling Pleas in the Court of the said Lord the King, before the King himself, according to the Liberties and Privileges of such Chief Clerk and his Clerks, used and approved in the same (Court) from the Time whereof

*In B. R.*

*On an Issue out of Chancery.*

*A Declaration against a Clerk of B. R.*

Chancery.

whereof the Memory of Man is not to the contrary, being present here (in Court) in his proper Person; for that, *to wit*, That whereas the said *V. B.* now deceased, was in his Life-time, *to wit*, (on *such* a Day and Year) at *London* aforesaid, in the Parish of the blessed *Mary of the Arches*, in the Ward of *Cheap*, possessed of seven Tallies, and seven Orders in Writing, made at the Exchequer of the said Lord the now King, at *Westminster*, &c. and to the same Tallies belonging and appertaining as of his own proper Tallies and Orders. Two of those Orders being respectively number'd with the Numbers 155 and 156, and made at the said Exchequer, in Pursuance of a certain Act of Parliament, entitled, *An Act for granting an Aid to his Majesty, by continuing the Duties upon Malt, Mum, Cyder and Perry, for one Year, &c.* and both of them bearing Date the 26th Day of *January*, in the Year of the Lord 1730. And of five Orders being the Residue of the said Orders, number'd with the respective Numbers following, *to wit*, 1006, 1007, 1008, 1009, 1010, and made at the Exchequer aforesaid, in Pursuance of a certain Act of Parliament, entitled, *An Act for granting to his Majesty a Land-Tax to be raised in the Year 1731.* Each of the said five Orders last mentioned, bearing Date (at *Westminster*) the 23d Day of *December* 1731. And that by Reason of the said Tallies, and the Orders in Writing made thereupon, there was due and owing to the said Testator, or his Assignees, the Sum of 3100*l.* Principal Money, which said Tallies and Orders (on *such* a Day, &c.) at *London* aforesaid

aforesaid, in the Parish and Ward aforesaid, **Chancery.**  
came to the Hands and Possession of the said *H.* And whereas after the Death of the said Testator, *to wit*, on the first Day of *October*, in the third Year of the Reign of the Lord *George* the Second, now King of *Great-Britain*, at *London* aforesaid, in the Parish and Ward aforesaid, a certain *Colloquium* (Discourse) was had and moved between the said *W. B.* the Executor, and the said *H.* of and concerning the said Tallies and Orders. And the said Possession of the said *H.* thereupon (thereof) And upon that Discourse he the said *H.* did then and there affirm, That the said Tallies and Orders were deliver'd, and that each (every) of them was deliver'd by the said *V. B.* the Testator, unto him the said *H.* by Way of Gift of the Principal Money due on the same Tallies and Orders, to the proper Use and Benefit of the said *H.* Yet the Interest for the same Principal Money was to be paid to the said *W.* the Testator, during his Life. Which said Affirmation he the said *W.* the Executor, then and there denied: And thereupon he the said *W.* the Executor, at the Instance of the said *H.* paid to the same *H.* 20 s. and in Consideration thereof he the said *H.* did assume (take) upon himself, and unto the same *W.* the Executor, then and there faithfully promised to pay to him the said *W.* 40 s. if the Tallies and Orders aforesaid were not deliver'd, and each (every) of them was not deliver'd by the aforesaid *V.* the Testator, unto the said *H.* by Way of Gift of the Principal Money due upon those Tallies and Orders, to the proper

**Chancery.****Averment.**

proper Use and Benefit of him the said *H.* as  
afore said. And the said *W.* the Executor in  
Fact saith, That the Tallies and Orders afore-  
said were not deliver'd, and each (every) of  
them was not deliver'd by the afore said *V.*  
the Testator, to the said *H.* by Way of Gift  
of the Principal Money due upon the same  
Tallies and Orders to the proper Use and Be-  
nefit of him the said *H.* as he the said *H.*  
hath above alledged. Yet he the said *H.* not  
regarding his Promises and Assumptions a-  
fore said, but contriving and fraudulently in-  
tending, craftily and subtilly to deceive and  
defraud the said *W.* the Executor in this Par-  
ticular, hath not paid the said 40 s. nor any  
Penny thereof to the said *W.* altho' he the  
said *H.* was afterwards, *to wit,* on the fifth  
Day of *October*, in the fourth Year afore said,  
in the Parish and Ward afore said, by the  
said *W.* required to do it; but hitherto hath  
wholly refused, and yet doth refuse to pay  
the same to him, to the Damage of him *W.*  
10 l. and thereof he brings his Suit, &c.

*The Plea  
thereto.*

*Confession and  
Avoydance.*

And the afore said *H.* in his proper Person  
comes and defends the Force and Injury,  
when, where, &c. and saith, That the afore-  
said *W.* (the Executor) ought not to have or  
maintain his Action afore said against him,  
because he saith, That well and true it is,  
that he the said *H.* was possessed of the Tal-  
lies and Orders afore said; and did assume  
upon himself in Manner and Form, as he the  
said *W.* by his Declaration afore said, hath  
above supposed; but he the said *H.* further  
saith, That the Tallies and Orders afore said  
were

were (delivered) and (each) every of them **Chancery.**  
 was delivered by the aforesaid *V.* the Testator, to him the said *H.* by Way of Gift of the said Principal Money, due on the same Tallies and Orders, to the proper Use and Benefit of the said *H.* altho' the Interest for the said Principal Money due upon the same Tallies and Orders, was to be paid to the same *V.* the Testator, during his Life, as the said *H.* hath above affirmed, *to wit*, at *London* aforesaid, in the Parish and Ward aforesaid; and hereof he puts himself upon the Country, and so doth the said *W.* likewise. Therefore let a Jury thereof (*i. e.* concerning it) come before the Lord the King at *Westminster*, on *Wednesday* next after three Weeks of *Holy Trinity*, and who are not by any Affinity related to either Party (*&c. as usual in awarding the Venire.*)

*See Lilly's Entr. pag. 66. another Declaration on an Issue directed out of Chancery, concerning Exceptions to an Account about a Partnership.*

T

The

**Chancery.****Averment.**

proper Use and Benefit of him the said *H.* as  
afore said. And the said *W.* the Executor in  
Fact saith, That the Tallies and Orders afore-  
said were not deliver'd, and each (every) of  
them was not deliver'd by the afore said *W.*  
the Testator, to the said *H.* by Way of Gift  
of the Principal Money due upon the same  
Tallies and Orders to the proper Use and Be-  
nefit of him the said *H.* as he the said *H.*  
hath above alledged. Yet he the said *H.* not  
regarding his Promises and Assumptions a-  
fore said, but contriving and fraudulently in-  
tending, craftily and subtilly to deceive and  
defraud the said *W.* the Executor in this Par-  
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Penny thereof to the said *W.* altho' he the  
said *H.* was afterwards, *to wit*, on the fifth  
Day of *October*, in the fourth Year afore said,  
in the Parish and Ward afore said, by the  
said *W.* required to do it; but hitherto hath  
wholly refused, and yet doth refuse to pay  
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*The Plea  
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And the afore said *H.* in his proper Person  
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upon himself in Manner and Form, as he the  
said *W.* by his Declaration afore said, hath  
above supposed; but he the said *H.* further  
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were

were (delivered) and (each) every of them Chancery.  
 was delivered by the aforesaid *V.* the Testator, to him the said *H.* by Way of Gift of the said Principal Money, due on the same Tallies and Orders, to the proper Use and Benefit of the said *H.* altho' the Interest for the said Principal Money due upon the same Tallies and Orders, was to be paid to the same *V.* the Testator, during his Life, as the said *H.* hath above affirmed, *to wit*, at *London* aforesaid, in the Parish and Ward aforesaid; and hereof he puts himself upon the Country, and so doth the said *W.* likewise. Therefore let a Jury thereof (*i. e.* concerning it) come before the Lord the King at *Westminster*, on *Wednesday* next after three Weeks of *Holy Trinity*, and who are not by any Affinity related to either Party (*&c. as usual in awarding the Venire.*)

*See Lilly's Entr. pag. 66. another Declaration on an Issue directed out of Chancery, concerning Exceptions to an Account about a Partnership.*

T

The

Original.

*The Form of an Original Writ out of Chancery, in an Action on the Case, by an Assignee against the Acceptor of a Foreign Bill of Exchange, payable at double Usance and half, &c.*

*Sir Mich. Warton against Careiron, and others.*

*An Original out of Chancery, by an Assignee against the Acceptor of a foreign Bill of Exchange.*

*Middlesex to wit. GEORGE, &c. to the Sheriff of London, greeting. If Michael Warton, Knt. hath made you secure for prosecuting of his Clamour then put by Gage and safe Pledges D. C. late of London, Merchant, and D. M. late of London, Merchant, That they be before you from the Day of St. Michael in one Month; wheresoever we shall then be in England, to shew, Why (That) whereas one A. C. being a Merchant, and a Person having Commerce (using Trade) and Dealings, on the 18th Day of July New Stile, (being the 7th Day of the Month of July, in the English Stile) in the Year of the Lord 1702, at Hamborough in the Parts beyond the Seas, to wit, at London aforesaid, in the Parish of the blessed Mary of the Arches, in the Ward of Cheap, made according to the Use and Custom of Merchants a certain Bill of Exchange, subscribed with his Hand, and directed the same to the aforesaid D. and D. at London aforesaid; by which said*

*Drawn at two Usances and half.*

Original.

said Bill of Exchange, he the said *A.* requested the same *D.* and *D.* at two Usances, and the half of a Usance to pay upon that his first Bill of Exchange, to the Order of one Lewis Maugin, the Sum of 100 l. Sterling, for Value receiv'd of him the said *L.* and that he should put it to Account according to Advice; which said Bill of Exchange afterwards and before the End of two Usances, and the half of a Usance, to wit, on the 18th Day of July in the English Stile, in the first Year of our Reign, at London aforesaid, in the Parish and Ward aforesaid, was shewn to them the said *D.* and *D.* for the Acceptance thereof, and they the said *D.* and *D.* did then and there according to the Use and Custom of Merchants, accept the said Bill of Exchange. And afterwards, to wit, on the 19th Day of July, in the Year last mentioned, at the Parish and Ward aforesaid, he the said *L. M.* by an Indorsement made upon that Bill of Exchange, according to the Use and Custom of Merchants, ordered the said Sum of 100 l. to be paid to one *P. W.* the Elder of Hull, or to his Order. And afterwards, to wit, on the same Day and Year last mentioned, at the Parish and Ward aforesaid, he the said *P. W.* the Elder, by another Indorsement made upon the same Bill of Exchange, according to the Use and Custom of Merchants, did order the said Sum of 100 l. to be paid to the Order of the said *Michael*, for Value receiv'd, of Mr. *R. C.* of which said Indorsement they the aforesaid *D.* and *D.* afterwards, to wit, the Day, Year, and Place last mentioned had Notice, whereby they the

And accepted.

Indorsed and  
reindorsed.

Notice.

## An Original Writ

Original.

*Averment of  
Usance be-  
tween Ham-  
borough and  
London.*

said *D.* and *D.* did according to the Use and Custom of Merchants, become bound and obliged to pay the said Sum of 100 *l.* to the said *M.* according to the Tenor of the said Bill of Exchange. And they the said *D.* and *D.* being so obliged, did in Consideration of the Premises, afterwards, *to wit*, the same Day and Year last mentioned, in the Parish and Ward aforesaid, assume (take) upon themselves, and unto the same *Michael*, then and there faithfully promised, That they the said *D.* and *D.* would pay and content (satisfy) the said Sum of 100 *l.* unto the said *Michael*, according to the Tenor of the said Bill of Exchange. And the aforesaid *Michael* in Fact saith, That according to the Use of Merchants, a Usance in a Bill of Exchange between Merchants of *Hamborough* and *London* aforesaid, contains in itself one Month from the Date of such a Bill, and no more; and that half a Usance (between such Merchants) contains in itself fifteen Days, and no more, *to wit*, at the Parish and Ward aforesaid; yet they the said *D.* and *D.* not regarding their Promise and Assumption made in the Form aforesaid; but contriving and fraudulently intending, craftily and subtilly to deceive and defraud the said *Michael* in this Particular, at the End of the said two Usances and half a Usance, next after the making of the said Bill of Exchange, or after the Acceptance of the same Bill, or at any other Time hitherto, have not, nor hath either of them paid the said Sum of 100 *l.* or any Part thereof to him the said *Michael*. But have wholly

wholly refused, and do still refuse to pay the same to him, to the Damage of him the said Michael 130 l. as he saith. And have ye there the Names of the Pledges and this Writ. Witness myself at *Westminster*, the eighth Day of *October*, in the first Year of our Reign,

*But for a fuller and clearer View of the various Forms of Original and other Writs, in the several Actions of Case, Account, Covenant, Debt, Detinue, Ejectment, Trespass, Trovers, Waste, &c. (as also the Forms of other necessary Processes in the Law) See the English Lawyer lately published, in pursuance of the Statute, That Proceedings in our Courts of Justice shall be in the English Language.*

T 3. DECLAR-

# DECLARATIONS

## And PLEADINGS in Actions of Account.

*These Declarations in Actions of Account are chiefly against Bailiffs, or Receivers or Guardians, i. e. such as receive Money in Trust for others; the Intent of the Action being to compel them to render an Account of such Moneys to him, for whose Use they received it; according to the following Forms.*

### *A Declaration in Account by Executors against a (Bailiff or) Receiver, to the Testator.*

*In B. R.  
By Executors  
against a Re-  
ceiver of the  
Testator.*

*Middlesex to wit.*

**T** J. and F. G. Executors of the Last Will and Testament of T. J. the Elder, deceased, complain of L. H. Merchant, in Custody of the Marshal of the Marshalsea of the Lord the now King, being before the King himself, of a Plea, That he render to them a reasonable Account from the Time that he was the Bailiff of him the said

said T. J. the Elder, and Receiver of the Monies of him the said T. in his Life, *to wit*, at *Westminster*, in the County aforesaid; for that, *to wit*, That whereas he the aforesaid L. on the 10th Day of *May*, in the first Year of the Reign of the Lord *George* the Second, now King of *Great-Britain*, until the 30th Day of *September*, in the second Year of the Reign of the same Lord the now King, had at *Westminster* in the County aforesaid, been the Bailiff of him T. J. the Testator, in his Life, and for that whole Time had had the Care and (Administration) Disposition of divers Goods and Chattels of him T. J. the Elder, *to wit*, of 200,000 Pounds of Tin, 30 Firkins of Stub-Nails, 224 Pounds of mixt Metal, called *Spelter*, 40,000 Pounds of Lead, and 500 Pounds of other mixt Metal, called *Tume Glass*, to the Value of 3000*l.* *to wit*, at *Westminster* aforesaid, in the County aforesaid, to make Merchandize and Profit thereof for him the said T. J. the Elder, and to render a reasonable Account thereof to him the said T. the Testator, when he should be thereto required, as (Bailiff) Receiver of the Monies of him the said T. J. during the whole Time aforesaid. And whereas he the said L. H. during the said Time had received of the Monies of him T. J. the Testator, at *Westminster* aforesaid, by the Hands of *P. P.* 113*l.* 5*s.* and there also by the Hands of *P. C.* 9*l.* and there also by the proper Hands of him the said L. H. 960*l.* of lawful Money of *Great-Britain*, to render a reasonable Account of the same to the same T. the Testator, when he should be thereto required. Yet he the said L. H. tho' thereto often required, *to wit*,

**Receivers.**

on such a Day, at Westminster aforesaid, hath not rendered to the said T. S. the Elder in his Life, or to said T. J. the Younger, and F. G. or to either of them since the Death of the said T. J. the Testator, any reasonable Account of the same. But hath altogether refused to do it, either to the said Testator in his Life, or to the said T. J. and F. G. the now Plaintiffs, since his Death, and doth still refuse to do the same, either to the said T. J. or the said F. G. the now Plaintiffs, or to either of them, to the Damage of them the said T. J. the Younger, and the said F. G. 10000 Pounds, and thereof they bring their Suit, &c. And they the said T. J. the Younger, and F. G. bring here into Court the Letters Testamentary of the Testament of the said T. J. the Testator, by which it sufficiently appears to the Court here, the said T. J. the Younger, and the said F. G. to be Executors of the Will (Testament) of the said T. J. the Elder, and to have the Administration of the said Will, &c.

Damage with  
Profect of the  
Letters Testa-  
mentary.

A De-

*A Declaration in Account against a Bailiff and Guardian.*

Debonshire to wit. **C. T. Gent.** complains of **J. T. Gent.** in Custody &c. of a Plea, That he render to him his reasonable Account from the Time that he was Guardian of the said **G.** and also from the Time that he was the Bailiff of him **G.** at **S.** in the Parish of **A.** in the County aforesaid. For that, to wit, That whereas by the Common Council of the Kingdom of England, it was provided, That the Guardians of Lands and Tenements held in Socage should render to the Heirs of such Lands and Tenants, when they come of full Age, their reasonable Account of the Issues (Profits) arising from those Lands and Tenements from the Time wherein they had the Custody (Guardianship) thereof by Reason of the Minority of the said Heirs. And whereas he the said **J. T.** had the Custody (Guardianship) of the Lands and Tenements of the said **C. T.** during the said **C's** Minority, to wit, of two Messuages, three Cottages, five Gardens, eight Acres of Land, thirty Acres of Meadow, fifty Acres of Pasture, thirty Acres of Wood, with the Appurtenances in **S.** aforesaid, in the said Parish of **A.** and said County of **D.** of which said Premisses he the said **J.** had the said Custody for more than ten Years, to wit, from the 6th Day of January, in such a Year, to the 20th Day of July, in such a Year, and for (during) that whole Time received the Rents, Issues and Profits of the said Messuages,

In B. R.  
Against a  
Bailiff and  
Guardian.  
Note.  
See Lilly 13.  
Pas. 13, W. 3.

First Count, as  
Guardian.

Guardian.

2d Count, as  
Bailiff.

Messuages, Lands, Tenements and Hereditaments; yet he the said J. hath wholly refused, and still doth refuse to render to the said C. (who is now of the full Age of twenty-one Years) his reasonable Account of the same, tho' he the said C. was, *to wit*, on *such* a Day in *such* a Year, at S. aforesaid, in the Parish and County aforesaid, and at divers other Times and Places since hath been thereto required. And also whereas he the said J. afterwards, *to wit*, on the 20th Day of *July* (in *such* a Year aforesaid, and Place, Parish and County as above) was the Bailiff of him the said C. of two Messuages, three Cottages, five Gardens (*Ec. supra*) with the Appurtenances in S. aforesaid, in the said Parish of A. and County of D. aforesaid, from the said 20th Day of *July*, in the said Year of the Lord last aforesaid, until the 7th Day of *October*, in *such* a Year (*i. e.* during the Time he was Bailiff or Receiver of the Rents after the Guardianship determined) and for and during that whole Time received and had the Rents, Issues and Profits of the same; to render his reasonable Account thereof to him the said C. when he should be thereto required; yet he the said J. altho' oftentimes thereto required, *to wit*, on *such* a Day at S. *Ec.* as above) hath not hitherto rendered his Account thereof to him the said C. But hitherto hath denied, and still doth altogether deny to render the same to him, To the Damage of him C. 1500 l. and thereof he brings his Suit.

A

Church-wardens.

*A Declaration and Pleadings in an Action of Account by the Present against the Late Church-wardens.*

London to wit. **N** Athaniel Andrews and Tho. Lucas Churchwardens, of the Parish of St. Katharine Colemanstreet, London, complain of Thomas Thornton, late Churchwarden of the Parish aforesaid, in Custody, &c. of a Plea, That he render to them his reasonable Account from the Time wherein he was Warden of the Parish Church aforesaid, and Receiver of the Moneys (of the Parishioners) of the Parish Church aforesaid. For that, to wit, That whereas the foresaid T. T. from the 10th Day of April in the Year of the Lord 1675, until the first Day of April 1676, at London aforesaid, to wit, in the said Parish of St. K. C. in the Ward of A. was Warden of the said Church, and Receiver of the Moneys of the said Parish Church, and for the Time aforesaid had the Care and Administration (Disposal) of the Goods and Moneys of the Parish Church aforesaid; and for (during) the same Time, at London aforesaid, in the Parish and Ward aforesaid, he the said T. as Warden of the same Church, received by the proper Hands of him the said T. 100 l. of lawful Money of England (Great Britain) of the Moneys of the Church aforesaid, to lay out and expend to the Use of the same Parish Church; and to render his reasonable Account of the same Moneys to them the said N. A. and T. L. the now Wardens of the same

In B. R.  
Account by  
the Present  
against the  
Late Church-  
wardens.  
Lilly 12.  
(Q.)  
Cro. Jac. 234.  
Pract. Reg.  
267. 683. 30.  
34.

## Declarations, &amp;c.

**Church-  
Wardens.**

same Church, when he should be thereto required; yet he the said T. T. tho' oftentimes thereto required, *to wit*, on such a Day, &c. in the Parish and Ward aforesaid, hath not rendered any reasonable Account of the said Moneys to them the said N. A. and T. T. or to either of them; but hitherto hath wholly denied (refused) and still doth deny (refuse) to render the same to the said N. A. and T. T. and to either of them. To the Damage of them the said N. and T. 100 l. and thereof they bring their Suit.

*Plea in Abatement, another  
Warden not  
named.*

*Traverse.*

AND the aforesaid T. T. by A. B. his Attorney, comes and defends the Force and Injury when, where, &c. and prays Judgment of the Bill (i. e. the Declaration aforesaid) because he saith, That one T. S. on the 10th Day of April, in the Year of the Lord 1695, in the said Bill mentioned, was together with him the said T. T. Warden and Receiver of the Moneys, and had the Care and Administration of the Goods and Chattels of the Church aforesaid, for that Time, and that the said T. S. is yet living, and in full Life, *to wit*, at London aforesaid, in the Parish and Ward aforesaid, without that, that the foresaid T. T. was alone Guardian and Receiver of the Moneys, and had by himself alone the Care and Administration (Disposal) of the Goods and Chattels of the said Church during the said Time, as the foresaid N. and T. have in their said Bill above declared: And this he is ready to averr, wherefore for that he the said T. S. (the said other Churchwarden) is not named in the Bill aforesaid,  
he

## IN ACCOUNT, against

he the said T. T. prays Judgment, and that the Bill aforesaid may be quashed (abated.)

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Church-  
Wardens.

Demurrer to  
the Plea.

And they the foresaid N. and T. do say, That for any Thing above in pleading alleged by him the said T. T. the said Bill of them the said N. and T. ought not to be quash'd (abated) because they say, that the said Plea above pleaded by the said T. T. for quashing (abating) of the said Bill and the Matter therein contained are not sufficient in Law to quash (abate) the said Bill of them the said N. and T. or to preclude (bar) them the said N. and T. from having their said Action to be maintained against him the said T. T. and this they are ready to averr, wherefore for Default of a sufficient Plea in this particular, they the said N. and T. pray Judgment, and that their Bill aforesaid, may be adjudged Good, and that the said T. T. may answer to the said Bill, &c. and for Causes of Demurrer in Law, to that Plea, according to the Form of the Statute in such Case thereof lately made and provided, they shew and demonstrate to the Court these Causes following, *to wit*, For that the Plea is uncertain and contains in itself a negative pregnant. And also because he the said T. T. hath by his Plea made a *full Defence*, and traversed Matter not traversable; and for that the said Plea wants Form, &c.

Special Causes.

Full Defence.

W. Thompson.

Here

**Church  
wardens.**

Difference  
in Pleas in  
Abatement,  
and in Bar.  
See Co. Lit.  
127.  
Yelv. 110.  
Bro. Tit. De-  
fence, 23. 30,  
31. 40.

Here Note; That Venit and Dicit, or Dicit only is a Good Defence by Attorney, 2 Salk. 543, 544. And See the Case of Walford and Saville, 1 Lutw. 7. &c. where, on a Special Demurrer to a Plea in Abatement as above, it was held a good Plea, tho' no Defence was therein; and to me it seems to be meer Matter of Form and Surplusage, and consequently the Retaining or Omision of it shall not vitiate the Plea: And therefore the Plea above seems Good, i. e. That one Churchwarden is not to answer without his Companion. But Note; as to Defences our Books do plainly make a Difference between Pleas in Abatement and Pleas in Bar. For where you are to defend the Wrong supposed by the Plaintiff by a Plea in Bar, you are to make the Common full Defence as above, and if such full Defence be not made, 'tis failing in Substance; but 'tis otherwise in Pleas in Abatement; for there the Defendant does not defend the Wrong, or plead to the Cause of the Action, but only Excepts to the Form of the Writ or Declaration, Ability of the Plaintiff or Misnomer, Jurisdiction of the Court, &c. which do not draw the Right or the Wrong charged, into Question.

DECLA-

# DECLARATIONS

and Pleadings in Actions of Cove-  
nant.

*A Declaration against an Administratrix  
on an Indenture of Covenants.*

*Spiddlefer to wit.* **JOHN Child**, Esq; com- In B. R.  
Against an  
Administra-  
trix on an In-  
denture of  
Covenants.  
See Lilly 132.  
plains of **Lucie How**, Wi-  
dow, Administratrix of all and singular the  
Goods and Chattels, Rights and Credits,  
which were of **Thomas How**, Esq; her late  
Husband, deceased, otherwise lately called  
**Thomas How** (Ec. as in the Deed) in Custody  
of the Marshal (Ec. see before) of a Plea of  
of Covenants broken (or breach of Cove-  
nants) For that, *to wit*, That whereas by a  
certain Indenture made at *Westminster* in the  
said County of *Middlesex*, on the 24th Day  
of *April*, in the Year of the Lord 1700,  
made between the said **T. How** in his Life,  
by the Name of **T. How** of the *Inner-Temple*,  
*London*, Esq; of the one Part, and he the said  
**John Child** by the Name of **J. C.** of the *Mid-  
dle-Temple*, *London*, Esq; of the other Part,  
one Part of which said Indenture sealed with  
the Seal of the said **T. H.** in his Life; he  
the said **J. C.** brings here into Court (which

Adminis-  
trators.

Protestando.

Averment.

is dated on the same Day and Year) reciting among other Things, That whereas he the said *T. H.* was indebted to him the said *J. C.* by a certain Note under his Hand in the Sum of 39 *l.* For which said Sum he had agreed to pay Interest; he the said *T. H.* did thereby among other Things covenant with the said *J. C.* to pay to him the said 39 *l.* with the Interest thereof, accordingly, as by the same Indenture, may among other Things more fully appear. And he the same *J. C.* by protesting that the foresaid *T. H.* in his Life, or the said *L.* after the Death of the said *T.* have not performed any of the Covenants or Grants in the said Indenture contained on their Part to be performed, In Fact saith, That he the said *T. H.* before the making of the said Indenture, *to wit,* on the 16th Day of *October*, in the sixth Year of the Reign of the Lord the now King, at *Westminster* aforesaid, by his Note aforesaid, became and was indebted to the said *J. C.* in the foresaid Sum; and that he the said *T. H.* in his Life, or the said *L.* after the Death of the said *T.* altho' often requested (thereto) have not paid the said 39 *l.* with the Interest, or any Part thereof, to the said *J. C.* nor hath either of them paid it, but they, and each of them have refused to pay it; and she the said *Lucie* doth still refuse to pay it. To which said *L.* after the Death of the said *T.* the Administration of all and singular the Goods and Chattels, Rights and Credits which were of the said *T.* at the Time of his Death, was in due Manner committed, *to wit,* at *Westminster* aforesaid; and so the said *J. C.* saith, That the said *T.* in his Life-time, and the said *L.* since

since the said T's Death, altho' often requested thereto, have not, nor hath either of them kept or performed to the said J. the Covenant of the said T. so made as aforesaid, with him the said J. in this Particular, but have, and each of them hath wholly broken and denied (refused) to keep the same, and she the said L. doth still wholly deny (refuse) to keep the same. To the Damage of him J. 50 l. and thereof he brings his Suit.

of Sale.

*A Declaration in Covenant on a Bill of Sale of Goods with Warranty.*

D. \* to wit. **A.** H. late of the Town of • Vid. Post.  
**A.** H. in the said County <sup>291.</sup>  
of H. Esq; was summoned to answer to J. G. <sup>In C. B.</sup>  
of a Plea, That he keep with him the Cove- <sup>On a Bill of</sup>  
nants between them, made according to the <sup>Sale of Goods,</sup>  
Force, Form, and Effect of a certain Writing <sup>&c.</sup>  
made by the said A. to him the said J. And <sup>See Lilly 138.</sup>  
whereof he the said J. by W. A. his Attorney,  
saith, That the said A. on *such* a Day and  
Year at the Town of H. aforesaid, by a cer-  
tain Writing, sealed with his Seal, and now  
brought here into Court, bearing Date on the  
same Day and Year, for and in Consideration  
of the Sum of 48 l. and 10 s. of lawful Mo-  
ney of this Kingdom, to him in Hand paid  
by him the said J. hath (had) bargain'd and  
sold to the said J. the Goods and Things men-  
tioned in a Schedule to the same Writing sub-  
scribed (and annexed as Part thereof) to have  
and to hold the same to the said J. his Exe-  
cutors,

U

**Of Sale.**

cutors, Administrators, and Assigns, to the only Use and Behoof of the said J. his Executors, Administrators, and Assigns for ever; and he the said A. hath (had) by the same Writing covenanted with the said J. That he the said A. would by the same Writing, warrant and for ever defend the said bargained Premisses, unto the said J. his Executors, Administrators, and Assigns, against all Persons whatsoever, as by the said Writing with the said Schedule thereto annexed, may more fully and clearly appear. And he the said J. in Fact saith, That the Premisses so sold as aforesaid, and in the said Schedule mentioned, are certain Goods and Chattels then being in a Brewhouse, then in the Possession of him the said A. H. and without the Houses of the then late J. W. situate in the said Town of H. and were and are; one File of Metal call'd a Kiln-Wire, all the Iron Backs of Chimneys in the said House, all the Locks and Keys of the said House, all the Leaden Pipes with Brass Cocks, the little Stove in the Kitchen (*and so name all the Goods as in the Schedule*). And he the said J. in Fact saith, That he the said A. had, at the Time of the said Sale so made by him of the said Goods and Chattels as aforesaid, no Interest in Possession or Property of, in, or to the said Goods and Chattels, or to any Parcel thereof; but the true Property thereof was in one J. H. And so he the said A. tho' oftentimes thereto requested by the said J. *to wit*, on such a Day, &c. at the Town of H. aforesaid, hath not kept (perform'd) his said Covenant above made with the said A. in that Particular, but hath

*A Sale without any Property.*

# In COVENANT on Bills

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hath broken the same, and hath wholly denied (refused) and still doth refuse to keep (perform) the same to the Damage of him *J.* 50 *l.* and thereof he brings his Suit.

*Of Sale.*

And the said *A.* by *C. N.* his Attorney comes and defends the Force and Injury, *when, where, &c.* and saith, that the Declaration aforesaid, and the Matter therein contained are not sufficient in Law for him the said *J.* to have his Action to be maintained against him the said *A.* and that he the said *A.* hath no Need, nor is by the Law of the Land bound to answer to that Declaration; wherefore for Default of a sufficient Declaration in this Particular, he the said *A.* prays Judgment; and that the aforesaid *J.* may be precluded (barred) from having of his said Action. And for Causes of Demurrer in Law upon that Declaration, he the said *A.* according to the Form of the Statute in such (that) Case made and provided, shews and demonstrates to the Court here these Causes following, *to wit*, in that, That by the Declaration aforesaid no *Place or County* is alleged from whence any Venue may arise, or from whence any Jury may come to try whether any, and what of the said Goods were contained in the said Schedule, or whether the Property of the said Goods and Chattels in the said Declaration specified, was at the Time of making the Writing in the said Declaration mentioned, in the said *A.* or in the said *J. H.* and in that, That it doth not appear by what Name the said *A.* is named, or what Addition he hath in the said Writing,

*A Demurrer to the Declaration.*

*With special Causes.*

*of Sale.*

*Note, divers  
of these Mat-  
ters are cor-  
rected in the  
above Prece-  
dent.*

as it ought to have been; so that it might manifestly appear, that he is the same Person which is named in the said Writing. And also in that, That the said Declaration is insensible in itself, and contradictory by alledging first, that at the Time of the making of the said Writing, he the said *A.* by the Writing aforesaid, had sold and deliver'd the said Goods and Chattels in the same Declaration mentioned, and afterwards alledging, that he the said *A.* at the same Time of the making of the said Writing had no Possession or Property of, in, or to the same Goods and Chattels. And also that it is not alledged, expressly and affirmatively, that there was any Schedule annexed to the said Writing, whereof any Issue can be taken or joined; and also in that, that the said Declaration is wholly uncertain, and wanteth Form.

*Joinder.*

And the aforesaid *J.* (for that, that he hath above alledged sufficient Matter in Law to maintain his said Declaration, as he is ready to aver; which said Declaration he the said *A.* doth not deny, nor any Way answer thereto, but altogether refuses to admit that Verification) prays Judgment and his Damages, by Occasion of the Breach of the said Covenant, to be adjudged to him, &c.

*A De-*

*A Declaration in Covenant by a Devisee  
against the Assignee of a Term.*

Hampshire to wit. **A.** M. Widow, com- In B. R.  
and T. H. Esq; Assignees of J. E. Kt. By a Devisee  
Custody (*Ec. see before*) of a Plea of Cove- against the As-  
nant broken; for that, to wit, That whereas signee of a  
one A. M. Widow, on the 8th Day of June, Term.  
in the Year of the Lord 1730, was seised in  
his Demeasn as of Fee of and in one Mes-  
suage or Tenement, and Farm, with the Ap-  
purtenances called A. otherwise B. situate  
and being in the Parish of B. near the City  
of W. in the said County of S. And being Seisin in Fee.  
so seised, he the same A. M. by his Indenture  
made on the 8th Day of June, in the Year  
aforesaid, at the said Parish of B. in the  
County of S. aforesaid, between him the said  
A. M. by the Name of A. M. of W. in the  
Parish of E. in the County of S. Widow, of  
the one Part, and the said T. H. in his Life,  
by the Name of (*Ec. as in the Deed*) of the Lease made.  
other Part (which said other Part sealed with  
the Seal of the said T. H. in his Life, he the  
said A. L. brings here into Court, bearing  
Date the same Day and Year) did demise,  
grant, and to farm lett unto the aforesaid  
T. J. in his Life, the Premisses aforesaid,  
with the Appurtenances called or known by  
the Name of the A. otherwise B. situate and  
being in the Parish of B. near the City of  
W. in the said County of S. and all and sin-  
gular the Houses, Edifices, (*Ec. as in the Premisses.*  
*Lease*) with a Recital also of the Habendum, Habend.  
Reddend.

**Assignees.***Covenant to  
repair,**Entry of the  
Lessee.**Who made his  
Will, &c.*

Reddendum; and then the Covenant to repair thus. And the aforesaid T. H. in his Life had for himself, his Executors, and Administrators, covenanted and granted to and with the said A. M. her Executors, Administrators, and Assignes, by the same Indenture, That he the said T. his Executors, Administrators, and Assignes, or some or one of them from Time to Time, and at all Times thereafter, during the said Term, should and would, at their own proper Costs and Charges, well and sufficiently repair, amend, &c. and keep the House, Messuage or Tenement, Barns, Stables, &c. and also all Edifices, Structures, and Buildings, then standing and being in and upon the Premises, or any Part thereof, with all needful and necessary Reparations and Materials whatsoever, and also keep and preserve the Hedges, and Walls, and Fences, and scour, purge, and cleanse the Drains, Ditches, Sewers, &c. (as the Deed) and at the End of the Term, leave, surrender, and yield up the said Messuages, &c. so well repaired, &c. By Virtue of which said Demise he the said T. H. in his Life, enter'd into the said Messuage, Tenement, and Premises, and was thereof possessed, the Reversion of the same Messuage and Tenement, &c. belonging to the said A. M. and her Heirs. And the aforesaid T. H. being so possessed of the Messuage and Tenement, with the Appurtenances as aforesaid, and she the said A. M. of the Reversion of the same Messuage and Tenement being seised in her Demeasn as of Fee. He the said T. H. afterwards, to wit, on the 20th Day of February, in such a Year, at such a Parish, &c. made his Testament

ment and Last Will in Writing, and of the same Testament did then and there constitute and appoint the said *J. E. T. H.* and *M. F.* his Executors, and afterwards died possessed of the said Tenements, with their Appurtenances aforesaid; after whose Death they the said *J. E. T. H.* and *M. F.* did take upon themselves the Execution of the Testament aforesaid, and enter'd into the said Tenements, with their Appurtenances so demised to the said *T. H.* in Form as aforesaid, and were thereof possessed by Reason of the Execution of the Testament aforesaid, the Reversion of the said Tenements and Appurtenances belonging to the said *A. M.* and her Heirs as aforesaid, of which said Reversion she the said *A.* was (then and there) seised in her Demeasn as of Fee as aforesaid. And she the said *A.* being so seised of the Reversion of the said Tenements and Appurtenances, did afterwards, *to wit*, on the 23d Day of *April*, in *such* a Year, at *such* a Place (Parish) in the County aforesaid, make her Testament and Last Will in Writing: And by the same Testament willed and devised all the said Tenements, with their Appurtenances, to *J. E.* Esq; since deceased, and to the said *A. L.* then the Wife of the said *J. L.* and to the Survivor of them, for and during the Lives of them, and the Life of the Survivor of them. And afterwards, *to wit*, on the last Day of *April*, in *such* a Year, in *such* a Parish (Place) in the said County of *S.* she the said *A. M.* died so seised of the Reversion of the Tenements and Appurtenances in the Form aforesaid; after whose Death they the said *J. L.* and *A.* his Wife, by Virtue of the De-

**Assignees.**

*Which the Executors proved and entered.*

*The Lessor devises to two for their Lives.*

Assignees.

One of the De-  
visees dies.Breach af-  
signed.Special Wastes,  
&c.

wise and Bequest aforesaid, became and were seised of and in the Reversion of the same Tenements and Appurtenances in their Demeasn as of Freehold, for the Term of their Lives, and of the Life of the longer Liver of them. And afterwards, *to wit*, on the last Day of *December*, in *such* a Year, at *such* a Parish, in the said County of *S.* he the said *J. L.* died seised of such his Estate in the said Tenements, &c. as aforesaid. And she the said *A. L.* did then and there survive him the said *J. L.* and thereby became, and was, and yet is sole seised of the Reversion of the same Tenements, &c. in her Demeasn as of Freehold, for the Term of her Life. And she the said *A. L.* further saith, That altho' she the said *A. M.* in her Life, and the said *J. L.* and *A. L.* in the Life of the said *J.* after the Death of the said *A. M.* and she the said *A. L.* after the Death of the said *J. L.* have severally and respectively, well and faithfully observed, perform'd, fulfilled and kept all and singular the Covenants, Articles, Grants and Agreements, in the aforesaid Indenture specified (which on the Parts of them the said *A. M.* *J. L.* and *A. L.* were to be observ'd, perform'd, fulfilled and kept) according to the Force, Form, and Effect of the same Indenture. Yet she the said *A. L.* in Fact saith, That during the Term aforesaid, and after the Death of the said *T. H.* *to wit*, on the 28th Day of *September*, in *such* a Year, the Glas of the Windows of the said Messuage so demised to the said *J. E.* as aforesaid, containing in Extent 40 Square Feet, to the Value of 40 s. were broken, spoiled, and

and demolished; and the Tiles of the same Messuage of such a Value, were also blown, and fell off, &c. (and the like may be shewn of the Timber, Walls, &c.) so that the said Messuage of the Value of 200 *l.* for Default of sufficient tiling, planking, glazing, &c. stood unrepaired, unglazed, and greatly ruinous, and in Decay from the said 28th Day of *September*, and so continue; by Rains and Tempests falling, and the Force of Winds beating thereon, the said Messuage is become greatly decayed, wasted, and ruined, and more and more Decay, Waste, and Ruin, do daily threaten the same Messuage. And also, That they the said *J. E. T. H.* and *F. M.* during the Term aforesaid; and after the Death of the said *T. H.* to wit, on the Day and Year last aforesaid, and for a long Time, &c. one Dove-house, belonging to the Messuage aforesaid, and being Parcel of the said demised Premisses, of the Price of 5 *l.* permitted to be unrepaired and decayed for Want of tiling, walling, and plaistering thereof; and also one Barn called the *Great Barn*; one Malting-house, one House, &c. other Parcel of the said Premisses so demised as aforesaid, of the Price of 40 *l.* to be and stand uncovered, and in Decay for Want of thatching, tiling, leading, walling and plaistering, boarding, joisting, ground-selling, &c. whereby the Fall, Ruin, and Destruction, of the said Premisses, are daily more and more threaten'd; and also permitted one Garden-Door, and 20 Perches of Posts, Pillars, and Garden-Rails, Parcel of the same Premisses of the Value of 10 *l.* to be putrified, corrupted,

Assignees.

rupted, broken, prostrated, carried away and spoiled for Want of repairing of the same. And that they the said *J. E. &c.* being Tenants of the Tenements aforesaid, during the Continuance of the said Term, or at the End or Determination thereof, have not repaired or amended the same Tenements; but suffer'd the said Tenements to be so in Decay, and unrepaired at the End of the said Term, when they the said *J. E. &c.* left the said Tenements and Premises so in Decay as aforesaid, without any Reparation or Amendment whatsoever, against the Form and Effect of the said Covenant in the said Indenture before mentioned: And so she the said *A. L.* saith, that they the said *J. E. &c.* or either of them, have not kept (perform'd) the said Covenant with the said *T. H.* in his Life, or the said *J. L.* in his Life, or the said *A. L.* since their Death, tho' they the said *J. E. &c. &c.* and every of them have been often thereunto requested, to wit, on such a Day, Year, Place, &c. in the County aforesaid; but they the said *J. E. &c.* have unjustly broken the same; and have hitherto denied, and still do, and every of them doth deny to keep (perform) the same to her the said *A. L.* whereof she the said *A. L.* saith, that she is the worse, and hath Damage to the Value of 200 *l. &c.*

Damage.

A De-

*A Declaration in Covenant for Non-payment  
of Rent, &c.*

Herefordshire to wit. **T**. M. late of *W.* in the  
Gent. was attached to answer to *J. E. Knight*,  
and *R. D. Knt.* and Bart. of a Plea of Covenant  
broken, and whereof they the same *J.* and *R.*  
by *F. E.* their Attorney, complain, That  
whereas the Right Noble *E. Viscountess P.*  
Widow, on the 11th Day of *April*, in *such* a  
Year, &c. was seized in her Demesne, as of  
Fee, of and in a certain Park, called *Radnor*  
Park, containing by Estimation 100 Acres  
or thereabout, and also of, and in one Mes-  
suage, situate, and being in a certain Place,  
called the *Cross*, in the County aforesaid,  
with the Appurtenances; and being so there-  
of seized the Day and Year abovesaid, by a  
certain Indenture, made at *Westminster* afore-  
said, between her the said Viscountess by the  
Name of *Elizabeth Viscountess P. Widow*, late  
Wife of the Right Noble *Robert Viscount P.*  
Baron of *D.* deceased, otherwise called *Robert*  
*Danvers*, alias *Villiers*, Esq; of the one Part,  
and the foresaid *T. M.* by the Name of *T. M.*  
of the Parish of *New-Radnor*, Gent. of the  
other Part, which said other Part of the said  
Indenture, sealed with the Seal of him the  
said *T. M.* they the said *J.* and *R.* do bring  
here into Court, dated the same Day and  
Year, had for the Consideration in the same  
Indenture mentioned, demised, granted, and  
to Farm letten, unto him the said *T. M.* the  
said Tenements, with their Appurtenances,  
and

*In C. B.*  
*For not pay-*  
*ing Rent, &c.*  
*See 3 Lev.*  
*229, &c.*

*Recital of the*  
*Lease to the*  
*Defendant.*

*The Premises.*

*Leases.*

*The Habendum.*

*Reddendum.*

and all Ways, Easements, Waters, Profits, Commodities and Appurtenances whatsoever to the same Park and Lands belonging and appertaining, or with the same used and enjoyed as Part, Parcel or Member thereof, or of any Part thereof. (Excepting, and always reserving out of the said Demise and Grant, unto the said Viscountess, and her Heirs and Assigns, All and all manner of Woods, Underwoods, Timber and Trees then standing, growing, and being, or that should afterwards stand, grow, or be in or upon the said demised Premises, or any Part thereof: To have and to hold the said Park, Lands and Messuage, and all other the Premises so demised by the said Indenture, or mentioned or intended to be so demised, with the Appurtenances, except before excepted unto him the said T. M. his Executors, Administrators and Assigns, from the 26th Day of *March* then last past, for and until the full End and Term of 16 Years from thence next following, and fully to be compleat and ended, *yielding and paying* therefore yearly, and every Year during the said Term, unto the said Viscountess *P.* and her Heirs and Assigns the Rent or Sum of 38*l.* of lawful Money of this Kingdom, at the two most usual Feasts or Days of Payment in the Year, *to wit, &c. Michaelmas and Lady-day*) at or in the *Bell-Inn at Old-Radnor*, by even and equal Portions. And he the said T. did by the same Indenture, for himself, his Heirs, Executors and Administrators, Covenant, Promise and agree to, and with the said Viscountess, her Heirs and Assigns, That he the said T. M. his Executors, Administrators and Assigns,

*Leases.*

Assigns, or some, or one of them, would from Time to Time, and at all Times, for and during the said Term, well and faithfully pay or cause to be paid unto the said Viscountess, her Heirs and Assigns, the said Rent of 38 l. at the Days and Place appointed for the Payment thereof, according to the true Intent of the Indenture aforesaid, as by the same Indenture brought into the Court here, may among other Things more fully appear; by Virtue of which said Demise, he the foresaid T. entered into the Tenements aforesaid, with the Appurtenances, and was, and yet is possessed; and he the said T. being so possessed, and the said E. Viscountess P. being seised of the Reversion of the said Park, Tenements and Appurtenances in her Demesne, as of Fee as aforesaid, she the said *Elizabeth* afterwards, to wit, the 25th Day of *February*, in such a Year, at *Westminster*, in the County aforesaid, in and by a certain Indenture made between the said E. by the Name of the Right Noble *Elizabeth* Viscountess P. sometimes called *Eliz. Danvers*, alias *Eliz. Villiers*, Widow, of the one Part, and the said J. E. and R. D. by the Name of J. E. of H. in the County of S. Gent. and R. D. of *Lincolns-Inn*, in the County of M. Esq; of the other Part; one Part of which said Indenture sealed with the Seal of the said *Elizabeth* Viscountess P. they the said J. and R. D. do bring here into Court, dated the same Day and Year for the Consideration of (set it fourth) did Grant unto them the said J. and R. among other Things the Reversion and Reversions, Remainder and Remainders, and the Rents of all and singular the

*Entry of the Lessee.*

*Grant of the Reversion.*

*Habendum.*

*Deales.*

*Note ; These Words are omitted in 3 Lev. 231, which made the Error in that Declaration.*

*Attornment.*

the Tenements aforesaid, with their Appurtenances ; to have and to hold to the said *R. D.* and *J. E.* his Heirs and Assigns. *To the only Use and Beboof of them the said R. D. and J. E. theirs Heirs and Assigns for ever (Quare the Reddendum to the Grantor)* as by the same last recited Indenture may among other Things more fully appear. To which said Grant of the Tenements aforesaid, so made by the said *Elizabeth* Viscountess *P.* to the said *J. E.* and *R. D.* as aforesaid, he the said *T. M.* being then possessed of the same Tenements, so demised to him as aforesaid, did afterwards, *to wit,* on the 25th Day of *March*, in the Year, &c. aforesaid, at *Westminster* aforesaid, Attorn himself, and agree, and then and there became Tenant of the Premises to hold the same of them the said *J. E.* and *R. D.* for and during the Residue of his said Term therein then to come and unexpired. By Pretext (Virtue) of which said Grant and Attornment, they the said *J. E.* and *R. D.* became and were seised in her Demeasn, as of Fee of the Reversion of the Tenements aforesaid, with the Appurtenances so demised to the said *T.* as aforesaid ; and they the said *J. E.* and *R. D.* do say, That altho' she the said *E.* from the Time of making the said Indenture of Demise, until the making of the said Grant of the Reversion to them the said *J.* and *R.* as aforesaid, and they the said *J.* and *R.* after the making of the said recited Indenture of Grant of the Reversion aforesaid, have well and faithfully performed, fulfilled and kept all and singular the Covenants, Grants, Articles and Agreements

# On COVENANTS in

303

Leases.

in the said Indenture of Demise contained, which on the Part of the said *Elizabeth* (or of the said *J.* and *R.*) were to be done and performed according to the Form and Effect of the said recited Indenture of Demise, yet they the said *J.* and *R.* in Fact say, That he the said *T.* after the making of the said Indenture of Assignment of the said Reversion unto the said *J.* and *R.* as aforesaid, and before the End of the Term so demised to the said *T.* as aforesaid, hath not paid to them the said *J. E.* and *R. D.* 38 *l.* of the said yearly Rent, due and in Arrear to them the said *J.* and *R.* for one Year, ending at the Feast of *St. Michael*, in such a Year; and so they the said *J.* and *R.* say, That the foresaid *T.* hath not kept, but unjustly broken his said Covenant, and hath hitherto denied (refused) and still doth deny (refuse) to keep the same; To the Damage of them the said *J.* and *R.* 50 *l.* &c.

Averment of Breach.

A De:

Charter-  
Party.

*A Declaration in Covenant on a Charter-  
Party of Freightment.*

In B. R.  
On a Charter-  
Party of  
Freight, &c.  
Lev. Entr.  
34. See 3  
Lev. 41.

London to wit. **A** *Rthur Shallet*, late of *Lon-*  
*don*, Merchant, other-  
wise called *A. S. &c.* (as in the Deed) was  
summoned to answer to *S. Cole* of a Plea,  
That he keep with him the Covenant be-  
tween them made, according to the Force,  
Form and Effect of a certain Indenture of  
CharterParty indented of Freightment thereof  
made between them; and whereof he the  
same *S.* by *R. H.* his Attorney saith, That  
whereas by a certain Charter-Party indented  
of Freightment, made the 26th Day of  
*August*, in the Year of the Lord, *&c.* at *Lon-*  
*don* aforesaid, in the Parish, *&c.* and Ward,  
*&c.* between him the said *S.* by the Name  
of *S. Cole* of *London*, Merchant, Part (Pro-  
prietor) Owner, of the Good Ship or Vessel,  
called *The Adventure of London*, of the Bur-  
thern of 44 Tons or thereabout, whereof  
*John N.* was then Master, and then at An-  
chor in the River *Thames*, *London*, of the one  
Part, and the foresaid *A. S.* by the Name of  
*A. S.* of *London*, Merchant, of the other  
Part, which Part whereof, sealed with the  
Seal of the said *A. S.* he the said *S. Cole* brings  
here into Court, whose Date is the same Day  
and Year, whereby 'tis (attested) Witnessed,  
That the said Part (Proprietor) Owner, had  
granted, and let to Freight the said Ship or  
Vessel to him the said *A. S.* and that he the  
said *A. S.* had hired the same Ship or Vessel  
for a Voyage to be made therewith, as in  
the

the said Charter-Party was (is) mentioned; **Charter-Parties.**  
 and thereupon the said Part-Owner for himself, his Executors and Administrators, covenanted, granted and agreed to, and with the said *A. S.* his Executors and Assigns by the said Charty-Party in Manner and Form following, that is to say, That the said Ship or Vessel should remain in the Port of *London*, for the Space of seven Days from the Date of the said Charter-Party, if the said Ship or Vessel should not be sooner dispatched, and should there take in and receive such Goods and Merchandizes as he the said *A. S.* or his Assigns should order to be put on board the same; And at the Expiration of the said Term should directly, as Wind and Weather would permit (serve) depart, and sail into the *Downs*, and from thence with the first *English* Convoy which should go for the *Mediterranean* Sea, should set sail, and as the Wind and Weather would permit, (serve) proceed and sail to the Port of *Barcelona*, or so near thereto as she could with safety arrive thereto make a right (true) Delivery to the said *A. S.* his Factors or Assigns of her Loading, which should be so received on board at *London*, as aforesaid; And further, That she should at *Barcelona* take in a lading of Wines, &c. and thence return to *London*, and that the Demorage of the said Ship should not exceed the said Voyage forty Days. (*&c. see the Precedent at large*) And thereupon the said *A. S.* (the Defendant) did thereby for himself, his Executors and Administrators, covenant, grant, and agree, to and with the said *S. C.* his Executors and Administrators in Manner following, *to wit*, That

X

he

*Covenants on the Plaintiff's Part.*

*Note; the Covenants are here abridged, being very prolix in the Original.*

*Covenants on the Defendant's Part.*

**Charter-  
Parties.**

*The Plaintiff  
Warrants the  
Ship, &c.*

*Breach af-  
signed.*

he the said *A. S.* his Executors, Factors or Assigns would not only unlade and relade the said Ship or Vessel at *Barcelona* aforesaid, with Wines and other Goods and Merchandizes, and deliver and discharge her of the same Wines, &c. at *London* aforesaid, within the said Forty Days allowed to the said *S. C.* for the Demorage of the said Ship, but would also well and faithfully pay 176 *l.* for the Hire of the said Ship, to be paid within ten Days after her Return, with Primage (Prizage) and Average; and that he would keep the said Ship both at *Barcelona*, and also at *London*, after her Return, so that the Demorage did not exceed in the whole the Space of twenty Days over and above the said forty Days so allowed to the said *S. C.* (the Plaintiff) for Demorage of the said Ship as aforesaid; and that he the said *A. S.* or his Assigns would pay to the said *S. C.* 20 *s.* *per Diem*, for every Day of such Demorage on his Part, besides the Hire of the said Ship, and one third Part of the Pilotage to be paid by the Plaintiff, and two thirds thereof by the Defendant (with divers other Covenants) also the said *S. C.* (the Plaintiff) Warrants the said Ship to be sound and substantial, and well and sufficiently victualled, tackled and apparelled and furnished with a good Boat, as also Sails, Anchors, Cables, &c. and binds himself in 350 *l.* for Performance of the Covenants on his Part, and the Defendant binds himself in the like Sum for Performance on his Part, as by the said Charter-Party indent-ed, &c. may more fully appear. *And then Assigns the Breach of the said Covenants thus:* And he said *S.* further saith, That altho' he hath

hath well and faithfully perform'd, fulfilled, and kept all and singular the Covenants, Grants and Agreements in the said Charter-Party contained, which on the Part of him the said *S.* were to be perform'd, fulfilled, and kept; and also protesting that he the said *A.* hath not perform'd, fulfilled, or kept any of the Covenants, Grants or Agreements in the said Charter-Party contained, which on the Part of the said *A.* were to be perform'd, fulfilled, and kept; he the said *S.* in Fact saith, That after the making of the said Charter-Party, and after the Expiration of the said Space and Time of seven Days after the Date of the same Charter-Party, the Ship aforesaid, being no sooner (ready) fitted, *to wit*, on the 18th Day of *September*, in the Year of the Lord 1700, the foresaid Ship being then well and substantially fitted and supplied with all Things necessary for her said Voyage, and the Goods and Merchandizes of the said *A.* being then (by Order of the said *A.*) on board of the same, the said Ship departed from the said Port of *London* (*to wit*, in the Parish and Ward aforesaid) directly as the Wind and Weather did permit, and proceeded to the *Downs*, and from thence with the first *English* Convoy that went for the *Mediterranean* Sea, the same Ship set sail, and as Wind and Weather did permit, proceeded and sailed towards the Port of *Barcelona*, in the said Charter-Party mentioned, *to wit*, in the Parts beyond Sea, at *London* aforesaid, in the Parish and Ward aforesaid, loaden with the Goods and Merchandizes of the said *A.* as aforesaid; and the same Ship afterwards, *to wit*, on the 27th Day of

*Protestando.*

*Averment.*

**Charter-  
Parties.**

*Special Breaches.*

1. That the  
Demorage ex-  
ceeded the  
Time limited.

*January* then next following, safely arrived at the said Port of *Barcelona*, and there made a right and true Discharge of the same Goods and Merchandizes, according to the Charter-Party aforesaid, *to wit*, at *London* aforesaid, in the Parish and Ward aforesaid; and that the same Ship after her said arrival at the said Port of *Barcelona*, did by occasion of the said *A.* and by his Order make Demorage there for more than the forty Days, and the twenty Days in the said Charter-Party mentioned, *to wit*, until the 17th Day of *April* then next following; and that he the said *A.* before the said 17th Day of *April*, in the Year 1701, did not relade, or cause the said Ship to be reladen with Wines, Goods and Merchandizes as whereas he ought to have reladen the same within the said Number of Days limited by the said Charter-Party in that Particular, according to the Form and Effect of the said Charter-Party: And, That the Ship aforesaid, on the same Day and Year last mentioned, did set Sail and depart from the said Port of *Barcelona* being loaden with divers Goods and Merchandizes of him the said *A.* put on board the same Ship by Order of the said *A.* and with the same Goods and Merchandizes sailed and returned towards the said Port of *London*, and being so loaden with the said Goods and Merchandizes of the said *A.* as aforesaid, did there, *to wit*, at the said Port of *London*, arrive at the End of 13 Months, and three Weeks next after the said Voyage was first begun, that is to say, on the 9th Day of *November*, in the Year of the Lord 1701. And the said *S.* having so finished the said Voyage, did afterwards, *to wit*, the  
Day

Day and Year last mentioned, at the said Port of *London*, in the Parish and Ward aforesaid, make a right and true Discharge (unlading) of the said Ship, according to the Charter-Party aforesaid, and he the same *S.* further saith, That the said *A.* tho' oftentimes required, had not paid to the said *S.* the said 176*l.* payable for the Hire (Frieight) of the said Ship, according to the Charter-Party aforesaid, or any Peny thereof, which he ought to have paid, according to the Form and Effect of the said Charter-Party; and he the said *S.* further saith, That the Money for Demorage of the said Ship for the said twenty Days more than (beyond) the said Forty Days made, according to the Allowance of the said Charter-Party, do in (by) itself, amount to 20*l.* and that he the said *A.* altho' thereto oftentimes required, hath not paid the said 20*l.* for the said Demorage, nor any Penny thereof, payable to the said *S.* in that Particular (Case) according to the Form and Effect of the Charter-Party aforesaid, and so he the said *S.* saith, That the foresaid *A.* altho' oftentimes thereto required, hath not kept his said Covenants made with the said *S.* in this Particular, but hath broken the same, and hath hitherto wholly denied, and still doth deny to keep (perform) the same to him the said *S.* whereof he saith, That he is the worse, and hath Damage to the Value of 500*l.* and thereof he brings his Suit.

*Charter-Parties.*

*2dly, That the Defendants had not paid the 176*l.**

*Damage 500*l.**

And the said *A.* by *J. M.* his Attorney, comes and defends the Force and Injury, when, where, &c. and saith, That he the said *S. C.* ought not to have his Action thereof a-

*The Plea.*

**Charter-  
Parties.**

*That the Demorage was  
occasioned by  
the Master  
and Servants.*

gainst him, because as to the assigning of a Breach of a Covenant in the Demorage of the foresaid Ship at *Barcelona* beyond (for more than) the forty Days, and the twenty Days in the foresaid Charter-Party mentioned, he saith, That the said Demorage was occasioned by the Default of the said *J. Nevil*, the Master of the said Ship, and his Servants, who during the Time of the said Demorage of the forty Days, and twenty Days in the Charter-Party aforesaid mentioned, were no way ready (prepared) in the Ship or Boat aforesaid, to serve the said *A. J.* or any Factor of him the said *A.* to and from the Land there, so that he the said *A.* could not relade the said Ship within the several Days last mentioned; and this he the said *A.* is ready to aver, and as to the assigning of a Breach of Covenant in the not paying of the Hire (Freight) of the said Ship, he the same *A.* saith, That he afterwards, *to wit*, on the 17th Day of *April*, in the Year of the Lord 1701, at *Barcelona* aforesaid, *to wit*, at *London* aforesaid, in the Parish and Ward aforesaid, did procure the said Ship to be reladen with Wines to the Value of 1000 *l.* and other Merchandizes of him the said *A.* and that the said Ship being so (expedited) ready (not said laden) on the same Day and Year last mentioned, departed from *Barcelona* aforesaid, but did not sail directly towards the Port of *London*, as Wind and Weather permitted; But afterwards, the same Day and Year last aforesaid, deviated from her said intended Voyage towards the Port of *London*, and sailed towards, and (afterwards) arrived at *Alicant* in the Parts beyond Sea, and afterwards

wards to *Cadiz*, and afterwards sailed to *Tangier* in the Parts beyond Sea, to wit, at *London* aforesaid, in the Parish and Ward aforesaid, and (by Occasion thereof) the said Ship did not arrive at the said Port of *London*, until the 10th Day of *October* then next following; by Reason of which Deviation of the said Ship, and prolonging of the said Voyage, the said Wines so laden in the said Ship as aforesaid, grew sour, and became prickt and spoiled, &c. and this he is ready to aver, whereof he the said *A.* prays Judgment, if the foresaid *S.* ought to have his said Action against him.

Charters  
Parties.

Note.

And the foresaid *S.* saith, That the Plea of the foresaid *A.* above pleaded, and the Matter therein contained are not sufficient in Law to preclude (Bar) him the said *S.* from having his said Action against the said *A.* And that he hath no need, nor is he bound by the Law of the Land, to answer to that Plea pleaded in the Manner and Form aforesaid; and this he is ready to aver, whereof (wherefore) for want of a sufficient Plea in this Particular, he the said *S.* prays Judgment, and his Damages by Occasion (Reason) of the said Breach of Covenant to be adjudged to him.

Demurrer to  
the Plea.

And Note; On the Defendant's joining in Demurrer, Judgment was for the Plaintiff. See 3 Lev. 41.

Note.

In Debt.

# DECLARATIONS And PLEADINGS in Actions of Debt.

The several  
Kinds of Ac-  
tions of Debt.

See before Tit.  
Assumpsits,  
&c.

An *Action of Debt* next to that of *Case*, is one of the most extensive *Titles*, as to the Recovery of *Personal Rights*, which we have in the Law, being as various in its kind, as the Nature of the *Penal Bill*, *Covenant*, or *Contract*, *Bond* or *Obligation*, *Deed*, *Specialty*, *Award*, *Amerciament*, *Lease* or *Grant*, *Judgment*, *Record*, or *Act of Parliament* is, upon which the same is founded. It also lies for *Rent*, or *Arrears of Rent*, as also against a *Sheriff* on an *Escape*; or for *Money levied in Execution*; and generally wherever an *Indebitatus Assumpsit* lies for any certain *Sum*, the *Plaintiff* in such *Case* may have either that *Action*, or an *Action of Debt* at his *Election*. Therefore, and for that the contracted *Limits* of this *Discourse* will not permit me to enlarge, I shall confine myself under this *Head* to *Declarations* and *Pleadings* in some of the most common and obvious *Cases*, on *Actions of Debt*, to wit, on *Indeb. Assumpsits*, *Bills*, *Bonds*, *Bail-Bonds*, *Sheriffs Bonds*, *Leases*, *Awards*, *Judgments*, &c.

A De-

*A Declaration in Debt (on an Assumpsit)  
for Horse-Hire.*

Middlesex to wit. **A.** B. complains of *C. D.* In B. R.  
*A.* in Custody of the Mar. Debt on an  
 shal of the *Marshalsea* of the Lord the King Assumpsit for  
 of the Court of the now Lord the King, be- Horse-hire.  
 fore the King himself, of a Plea, that he ren-  
 der to him 6 l. of lawful Money of *Great-*  
*Britain*, which he owes to him, and unjustly  
 detains: *And whereof* he the said *A.* by  
*J. S.* his Attorney saith, That whereas he the  
 said *A.* (*such a Day, Year, and Place*) in the  
 County aforesaid, was possessed of one Horse  
 of his own proper Horse; and being so pos-  
 sessed, afterwards, *to wit*, the same Day and  
 Year, at *T.* aforesaid, lett the said Horse to  
 the said *C.* for Hire, to be used (ridden) by  
 the said *C.* for the Space of three Weeks then  
 next following; and from that Time, after-  
 wards, as long as it should please the said *C.*  
 (to use or keep the said Horse) he the said *C.*  
 rendring therefore to the said *A.* for the said  
 three Weeks then next following, 40 s. and  
 1 s. and 6 d. for every Day wherein he the  
 said *C.* should detain the said Horse after the  
 said three Weeks, to be paid to the said *A. B.*  
 when he (the said *C.*) should be thereunto re-  
 quired. And the said *A.* saith, That in Fact  
 he the said *C.* had and used the said Horse by  
 the said Space of three Weeks; and also kept  
 and detained the said Horse from the said *A.*  
 by the further Space of 60 Days, whereby  
 an Action hath accrued to the said *A.* to have  
 of

## Declarations, &amp;c.

In Debt.

of the said C. the said 6 l. Yet he the said C. tho' often times thereto required by the said A. hath not paid the said 6 l. or any Penny thereof to him the said A. but hath altogether refused, and still doth refuse to pay the same, to the Damage of the said A. 6 l. and thereof he brings his Suit.

Thomas White for the Plaintiff.  
John Brown for the Defendant.

Pledges of the Prosecution } J. Doe,  
and  
R. Roe.

Note, It appears from the foregoing Precedent, That divers of the Precedents under the Titles, *Assumpsit*, *Indebitatus Assumpsit*, *Covenant*, &c. may be turned into Actions of Debt, i. e. where the Sum can be reduced to a Certainty. Yet in all Cases where Wager of Law is admitted, an Action on the Case, &c. is more eligible.

In B. R.  
On a Bill Pen-  
al.

## A Declaration in Debt on a Penal Bill.

London to wit. A. B. complains of C. D. render to him 20 l. of lawful, &c. (for that, to wit, &c. or) That whereas the said C. such a Day and Year, at the Parish of the blessed Mary of the Arches (Bows) in the Ward of Cheap, by his certain Bill Obligatory, sealed with the Seal of him the said C. here shewn to the Court of the said Lord the now King, and dated the same Day and Year, acknowledged himself to owe to the said A. the Sum of

of 10*l.* of lawful Money of Great-Britain, *Bill Penal*  
*To be paid* to the said *A.* (his Executors, &c. *if the Bill be so*) at or upon the first Day of  
*May* then next following after the Date of  
 the said Bill. And for the same Payment  
 well and truly to be made, he the said *C.* by  
 the same Bill firmly bound himself, his Heirs,  
 Executors, and Administrators, in the said  
 Penal Sum of 20*l.* And he the said *A.* saith,  
 That in Fact he the said *C.* did not pay the  
 said 10*l.* unto the said *A.* in or upon the said  
 first Day of *May*, which he ought to have  
 paid to him in and upon the same Day, ac-  
 cording to the Form and Effect of the said  
 Bill; whereby an Action is accrued to the  
 said *A.* to demand and have of the said *C.*  
 the said 20*l.* as aforesaid. Yet he the said *C.*  
 tho' thereto oft-times required, hath not yet  
 paid the said 20*l.* &c. *supra.*

*Without a Pe-  
 nalty.*

Note, *If the Bill be without a Penalty, say,*  
*To be paid* to the said *A.* his Executors, Ad-  
 ministrators, or Assigns, at or upon the first  
 Day of *May*, next after the Date of the Bill  
 Obligatory aforesaid. And for the said Pay-  
 ment well and truly to be made, he the said  
*C.* bound himself, his Heirs, Executors, and  
 Administrators, firmly by the same Bill;  
 yet he the said *C.* tho' often required, had  
 not paid, &c.

In Debt.

*A Declaration on a Common Bond, for Payment of Money.*

In B. R.  
On a Common  
Bond to pay  
Money.

Note this  
Form.

Middlesex to wit.

**A.** B. complains of *C. D.* otherwise called (named) *C. D.* (of such a Place, Addition, &c. as in the Bond or Specialty) in Custody of the Marshal, &c. of a Plea, That he render to him 100 *l.* of good and lawful Money of *Great-Britain* (or of this Kingdom) which he owes to him, and unjustly detains; for that, to wit, That whereas the aforesaid *C.* on the ninth Day of *May*, in the fifth Year of the Reign of the Lord *George* the Second, now King of *Great-Britain*, &c. at the Parish of *M.* in the County aforesaid, by his certain Writing Obligatory, sealed with the Seal of the said *C.* and here shewn to the Court of the said Lord the now King, and dated the same Day and Year, acknowledged himself to be held and firmly bound to the said *A.* in the aforesaid 100 *l.* to be paid to the same *A.* when he should be thereunto required. Yet he the said *C.* altho' often required, hath not yet paid the aforesaid 100 *l.* to the said *C.* but hath wholly denied, and still (yet) doth deny to pay it to him, to the Damage of him *A.* 20 *l.* and thereof he brings his Suit.

*To which may be added a Profert, &c. as in the next Precedent.*

*A De-*

*A Declaration by two Plaintiffs on a Bond;  
with Oyer, and a Demurrer thereto.*

London to wit. **E.** *Whistler*, late of *London*, In C. B.  
Debt on Bond,  
&c. by two  
Plaintiffs.  
Intr. Mich.  
4 Geo. 1. Rot. Merchant, was summoned to answer to *R. Salter* and *J. Salter* of a Plea, That he render to them 142*l.* which he owes to them, and unjustly detains; and whereof they the said *R.* and *J.* by *R. Humphries* their Attorney, say, That whereas the said *E.* on the 21<sup>st</sup> Day of the Month of *March*, in the third Year of the Reign of the Lord *George*, now King of *Great-Britain*, at *London* aforesaid, to wit, in the Parish of the blessed *Mary of the Arches*, in the Ward of *Cheap*, had by his certain Writing Obligatory acknowledged, That he was bound to the said *R.* and *J.* and (also) to one *F. Salter* now deceased, and whom the said *R.* and *J.* have survived, in the aforesaid 142*l.* to be paid to the said *R.* and *J.* when he should be there-to required. Yet he the said *E.* tho' often required, hath not paid the said 142*l.* unto the said *T. R.* and *J.* or to either of them in the Life of the said *T.* or unto the said *R.* and *J.* or either of them, after the said Death of the said *T.* but hath hitherto altogether denied, and still doth deny to render the same to them, or to either of them; whereof they the said *R.* and *J.* say they are the worse, The Profer. and have Damage to the Value of 10*l.* and thereof they bring their Suit. And they bring here into Court the Writing Obligatory aforesaid; which testifies the Debt in the  
Form

**Bond, &c.** Form aforesaid; the Date whereof is the Day and Year abovesaid.

**Plea,**

**Oyer.**

**The Condition.**

**Demurrer.**

**For Cause.**

And the aforesaid *E. W.* by *J. R.* his Attorney, comes and defends the Force and Injury, when, where, &c. and pray Oyer (the hearing) of the said Writing, and it is read unto him. He also prays Oyer of the Condition of the same Writing; and it is read to him in these Words, *to wit, The Condition of this Obligation is, That if the above bounden E. W. his Heirs, Executors, Administrators, or Assigns, shall and do, well and truly pay, or cause to be paid, unto the above-named T. S. R. S. and J. S. or to any of them, their, or any of their Executors, Administrators, or Assigns, the full Sum of 75 l. 5. s. of good and lawful Money of Great-Britain, on or before the 21st Day of June next ensuing the Date of the above Obligation, together with Interest for the same, at the Rate of, &c. per Ann. without Fraud or further Delay, then the said Obligation to be void, &c.* which being read, and (by the said *E.*) heard, he the said *E.* saith, That they the aforesaid *R.* and *J.* ought not to have or maintain their Action (thereof) against him the said *E.* to which said Declaration he the said *E.* hath no Need, nor is he by the Law of the Land bound to answer in any Manner. And this he is ready to aver; wherefore for Want of a sufficient Declaration in this Particular, he the said *E.* prays Judgment of the said Declaration, and that the same Declaration may be *quash'd.* And for Causes of Demurrer in Law, according to the Form of the Statute in such Case lately made and provided; he the said *E.* (gives to be shewn or) shews to the

the Court here these following Causes; for *Bond, &c.*  
that, that it does not appear, or it is not al-  
ledged, That the Writing Obligatory afore-  
said, in the Declaration above-mentioned,  
was sealed with the Seal of the said E. as by  
Law it ought; and for that, that the Decla-  
ration aforesaid is uncertain and wants Form,  
hath false *Latin, &c.*

*But Note, on arguing this Demurrer, Judg-  
ment was for the Plaintiff, 7 November 1717.*

*The Entry of a Declaration in Debt on Bond,  
where the Defendant, after a Special  
Imparlance, pleads his Privilege as an  
Attorney of B. R. in Abatement, to a  
Suit in C. B. Judgment to answer over.*

*Middlesex to wit.* **E** Rewhile as appears in *In C. B.*  
*Easter Term last past in Trin. 4 Geo. 1.*  
*Roll 382, it is contain'd thus; Middlesex to Debt on Bond,*  
*wit, Richard Combes, late of the Parish of with a Plea of*  
*St. Giles in the Fields, in the County aforesaid, Privilege in*  
*Gentleman; otherwise called Richard Combes Abatement.*  
*of the Parish of St. Giles in the Fields, in the See Easter*  
*County of Middlesex, Gentleman, was sum- Term, 4 Geo.*  
*moned to answer to Thomas Moore, Gentle- 1 Roll. 382.*  
*man, of a Plea, That he render to him 200 l.*  
*which he owes to him, and unjustly detains;*  
*and whereof the same T. by G. R. his At-*  
*torney, saith, That whereas the aforesaid R.*  
*on the 22d Day of December, in the third*  
*Year of the Reign of the Lord George, now*  
*King of Great-Britain, at Westminster, in the*  
*County aforesaid, by his certain Writing Ob-*  
*ligatory*

In Debt.

200 l. Debt.

400 l. Damages.

Plea in Abatement.  
See infra.Condition to  
pay 100 l.See Lutw. 43,  
44, 45.

ligatory had granted (acknowledged) himself to be held and firmly bound unto the said *T. M.* in the said 200 l. to be paid to the same *T.* when he should be thereto required. Yet he the said *R.* tho' often required, had not yet render'd the said 200 l. to him the said *T.* but hath hitherto refused, and still doth refuse to render it to him; whereof he saith, That he is the worse, and hath Damage to the Value of 400 l. and thereof he brings his Suit. (*And brings the Bond into Court, as above.*) See before, p. 317.

And the aforesaid *Richard* in his proper Person comes (and defends the Force and Injury, when, where, &c.) see before, that this is needless in a Plea in Abatement, and prays Oyer of the Writing (Obligatory) aforesaid, and it is read to him; he also prays Oyer of the Condition of the same Writing; and it is read to him in these Words: The Condition of this Obligation is such (&c. in the usual Form to pay 100 l. on the 24th of *March* then next ensuing the Date) which being read and heard, he the said *Richard*, saving to himself all, and all Manner of Advantages, Exceptions, and Allegations, as well to the Writ, as to the Declaration, prays Licence of Imparling thereof (thereto) here until the Morrow of *Holy Trinity*, and hath it. The same Day is given to the aforesaid *Thomas* to be here. At which Day the said *R.* came here in his proper Person (and the said *R.* defends, &c. as above) and saith, That the Court of the Lord the King, now here, ought not to have Cognizance in the Plea aforesaid, because he saith, That he the same *R.* is and  
was

was on the Day of suing out the Original Writ of the said T. and long before, and always from thence afterwards hitherto hath been, and now is an Attorney of the Court of the said Lord the now King, before the King himself, the same Court being at *Westminster* in the County of *Middlesex*. And that he the same R. prosecutes and defends divers Pleas (Causes) and Suits, of and for divers Subjects of the said Lord the now King, as their Attorney, in the same Court of the said Lord the King, before the King himself, and that all and every, or any such Attorney or Attorneys of the same Court, ought not to be, nor have they or any of them, beyond the Time whereof the Memory of Man is not to the contrary, been accustomed to be drawn or compell'd against their Will or Wills, to answer before any Judges or Ministers of the said Lord the King, or before any other secular Judges whatsoever, except (in the said Court) before the said Lord the now King, and his Predecessors Kings and Queens of this Realm, in any Plea or Plaint (Pleas of Freehold, Felony, and Appeals only excepted) according to the Liberties and Privileges of the same Court of the said Lord the now King, before the King himself, and his Predecessors, Kings and Queens of this Realm, for the whole Time aforesaid, used and approved. And this he is ready to aver; whereof he prays Judgment, if the Court of the said Lord the King, now here, will take any further Cognizance of the Plea aforesaid.

*Bonds, &c.*  
Privilege of  
B.R. to a  
Suit in C. B.  
by Prescription.

**Bonds, &c.**

*To this Plea the Plaintiff demurs in general, concluding thus.*

**Demurrer.  
Conclusion.**

Whereof and for Want of a sufficient Plea in this Particular, he the said T. prays Judgment, and that the Court here will take further Cognizance of that Plea. And that the said R. C. may (make a) further Answer to the Writ and Declaration aforesaid.

**Joinder and  
Judgment.**

*In which Demurrer the Defendant joined as usual; and on Argument, July the fifth, 1717, Judgment was, That the Defendant should answer over, i. e. make a further and better Answer.*

**Non est Factum in Bar.  
B. R.**

Note, where Non est Factum is pleaded in Bar, after an Imparlane to an Action brought on a Bond or other Deed, it is in this Form in B. R. viz.

And now at this Day, to wit, on Friday next after the Morrow of Holy Trinity in this same Term, until which Day the aforesaid Richard had Licence of Imparling to the aforesaid Bill, and then to answer (and so forth) came as well the aforesaid T. by his Attorney aforesaid, as the aforesaid R. by J. M. his Attorney. And the same R. defends the Force and Injury, when, where (and so forth) and saith, That he by Force of the said Writing ought not to be charged with the said Debt, because he saith, That that Writing is not his Deed; and of this he puts himself on the Country; and thereof the aforesaid R. doth likewise (and so forth) Therefore let a Jury thereof come before the Lord the King at

**Issue and**

**Venire awarded.**

at Westminster, on Wednesday next after the Bonds. &c.  
 Octaves of (or eight Days after) Holy Trinity,  
 And who are neither (and so forth) to recog-  
 nize (and so forth) because as well (and so  
 forth) The same Day is given to the said Par-  
 ties to be there (and so forth.)

Note, The frequent Repetition of the Words Note.  
 (and so forth) which by Virtue of the late Act Of &c's.  
 for rendring the Law into English, 'tis said are to  
 be used instead of the &c's formerly, may I think,  
 in divers of the above Instances, be well omitted,  
 especially in that Part which relates to the award-  
 ing of the Venire, or the whole Connection may  
 be expressed at large thus: And who are related  
 to neither the Plaintiff nor Defendant, to re-  
 cognize (take Knowledge of) the Matter in  
 Issue between the said Parties, because as well  
 the Plaintiff as the Defendant, between whom  
 the Dispute thereof is, have put themselves  
 on that Jury, the same Day is given to the  
 Parties.

See of Memorandums Juratas, and making  
 up Records, &c. in Debt infra.

Note also, By the Statute of 4 & 5 Annæ, for Plea of Pay-  
 Amendment of the Law, If the Money due ment at the  
 on such Bond (for Payment of Money) be Day. See the  
 paid, &c. before the Action brought, such Stat. 4. 5. A.  
 Payment, &c. may be pleaded as Payment And Note this  
 at the Day, tho' it was paid after the Day; Form.  
 which Plea is in this Form, viz.

Which (i. e. The Obligation and Condition)  
 being read and heard, he the said R. saith,  
 That the said T. ought not to have or main-

**Bonds, &c.**

tain his said Action thereof against him, because he saith, That he the said R. paid to the said T. the said 100 l. in the Condition of the Writing Obligatory above mentioned, upon the 24th Day of March next following the Date of the said Writing, to wit, at W. aforesaid, in the County of M. aforesaid; and this he is ready to aver; whereof he prays Judgment, if the said T. ought to have or maintain his said Action thereof against him.

*Plea of Tender at the Day, with an Adhuc Paratus.*

*And in the Case of Underhill against Mathews, Pas. 1 Geo. 1. in C. B. the Plea of Tender and Payment after the Day, was thus.*

*In C. B.*

Which being read and heard, he the said R. (the Defendant) saith, that she the said Penelope ought not to have or recover her said Damages, (*Note, the Declaration was for a Debt, viz. 70 l. due on Bond, and the Non-Payment, laid to the Damage of 20 l.*) by Occasion of the Detention of that Debt, because the said R. saith, that the lawful Interest of the said 70 l. in the said Condition above mentioned, due on the 27th Day of November, in the Year of the Lord 1714, did amount to 6 l. 4 s. and no more. And that he the said R. after the making of the said Writing Obligatory, and before the suing out the Original Writ of the said P. to wit, on the same 27th Day of November, in the Year 1714, aforesaid, at the Parish aforesaid, in the County aforesaid, was ready and offered to pay to the said P. the said 70 l. in the Condition above mentioned; and also the said 6 l. and 5 s. for the Interest thereof. Which said 70 l. and also the said 6 l. and 5 s. she the said P. did then

then and there altogether refuse to receive. *Bonds, &c.*  
 And (that) the said *R.* hath ever since (hitherto) been, and yet is ready to pay to the said *P.* the said 70 and 6 *l.* and 5 *s.* and brings the same 70 and 6 *l.* and 5 *s.* here into Court ready to be paid to the said *P.* if she will receive it. And this he is ready to aver; whereof he prays Judgment, if the said *P.* ought to have or recover her said Damages against him the said *R.* by Occasion of the Detention of the said Debt. (*Quere*, of the Inception and Conclusion of this Plea?) *And Note, on a Demurrer thereto, Judgment was for the Plaintiff. See Dyer 300. Hob. 150. 2 Lev. 209. 1 Inst. 217. 1 Co. 95.*

*A Declaration in Debt upon an Arbitration Bond, with a Plea, Replication, &c. with a special Demurrer.*

**Devonshire to wit.** *J. Rood*, late of the City of *In C. B.*  
*J. Exon*, in the County of *On a Bond of*  
 the same City, Grocer, otherwise called *J. R.* *Arbitration.*  
 of the City of *Exon*, Grocer, was summon'd *Plaf. 2 Geo. 1.*  
 to answer to *W. Bingham* of a Plea, That he *Rot.*  
 render to him 500 *l.* which he owes to him, and unjustly detains. And whereof the same *W.* by *T. C.* his Attorney, saith, That whereas the said *J.* on the 24th Day of *July*, in the 10th Year of the Reign of the Lady *Anne*, late Queen of *Great-Britain*, at *Exon*, in the County aforesaid, by his certain Writing Obligatory, granted (acknowledged) himself to be (held) bound to the said *W.* in the said 500 *l.* to be paid to the said *W.* when thereof he should be required. Yet he the said *J.*

**Bonds, &c.** tho' often required, hath not yet render'd the said 500 l. to him the said *W.* but hath hitherto altogether refused, and still doth refuse, to render it to him; whereof he the said *W.* saith, that he is the worse, and hath Damage to the Value of 40 l. (*Sc.* with the usual *Profert.*)

*The Plea.*

*Oyer prayed.*

*Form of the Award.*

And the aforesaid *J.* by *R. S.* his Attorney, comes and defends the Force and Injury, when, where; and prays Oyer of the said Writing Obligatory in the said Declaration specified; and 'tis read to him. He also prays Oyer of the Condition of the said Obligation; and 'tis read to him in these Words, to wit, *The Condition of this Obligation is such, That if the above-bounden J. R. and J. A. their Heirs, Executors, and Administrators, for their and every of their (several) Parts and Behalfs, do in all Things well and truly stand to obey, abide, perform, and keep the Award, Order, Arbitrament, Rule, Judgment, and Determination of Francis Drew of the City of Exon, Esq; Arbitrator, indifferently named, elected, and chosen, as well on the Part and Behalf of the above bounden J. Rood and James Arundel, as on the Part and Behalf of the above named W. Bingham, to arbitrate, award, order, rule, judge and determine of and concerning all and all Manner of Action and Actions, Cause and Causes of Action, Suits, Debts, Debates, Accounts, Specialties, Judgments, Executions, Quarrels, Controversies, Trespasses, Damages, and Demands whatsoever, at any Time heretofore had, made, proved, commenced, prosecuted, done, committed, or suffered by or between the said Parties, or any of them, so as the said Award be made by the said Arbitrators, and put in Writing under their Hands and Seals, on or before*

fore the 23d of October next, then this Obligation to be void, or else, &c. *Bonds, &c.* Which being read and heard, he the said *John* saith, That the aforesaid *William* ought not to have or maintain his Action thereof against him, because he saith, that at any Time after the making of the said Writing, and within the Time in the said Condition limited in that Behalf, he the said *Francis Drew*, the Arbitrator therein named, made no Award of or upon (concerning) the Premisses in the said Condition specified between the said *J. R.* and *J. A.* and the said *W. B.* according to the Form and Effect of that Condition. And this he is ready to aver; whereof (wherefore) he prays Judgment, if the aforesaid *W.* ought to have or maintain his said Action thereof against him.

And the said *W. B.* saith, That he for any Thing before alledged, ought not to be (precluded) barred from having his said Action, because he saith, That after the making of the Writing Obligatory aforesaid, and before the said 23d Day of *October*, in the said Condition above specified, *to wit*, on the 14th Day of *September*, in the Year of the Lord 1711, at *H.* aforesaid, he the said *F. D.* taking on himself the Burden of the said Arbitrament, of and concerning the Premisses in the said Condition above specified, made his certain Award (Arbitration) of and upon (concerning) the same Premisses in Writing, under his Hand and Seal, bearing Date on the same Day and Year; By which said Writing reciting, *That whereas divers Suits and Controversies had commenced and arisen between the* *Form of the Award.* said *J. R.* of the City of *Exon*, Grocer, and the said

*Bonds, &c.*  
*Recital of the*  
*Case.*

said J. A. of the same City, Dyer, in the Condition above named, and Assignees under a Commission of Bankruptcy lately made against J. B. of the same City, Tallow-Chandler, of the one Part, and the said W. B. of the same City, Tallow-Chandler, of the other Part, touching and concerning the Validity of certain Indentures of Lease and Release, bearing Date on or about the 27th and 28th Days of March 1710, and purporting a Mortgage of certain Premises therein mentioned and made, or mentioned to be made by the said J. B. to the said W. B. to counter secure himself the said W. B. against a Note given by him W. B. and one Mr. David B. to Mr. William Hull of the said City of Exon, an Attorney at Law; and against three several Writings Obligatory, enter'd into by the said W. B. together with the said J. B. as follow (that is to say) to Abraham Trout of the same City, Merchant, since deceased, in the Penal Sum of 200 l. conditioned for the Payment of 100 l. and Interest, and dated on or about the 14th Day of July 1698, to S. W. of the same City, Widow, in the penal Sum of 200 l. conditioned for the Payment of 100 l. and Interest, on such a Day, &c. and to Anne Pope of the same City, Widow, in the penal Sum of 100 l. conditioned for the Payment of 50 l. &c. as in and by the said Lease and Release Note under Hand, and the three several Bonds, may more fully, &c. appear; and also touching and concerning divers Goods and Chattels, which the said W. B. had in his Custody, &c. of the said J. B. and whereto the said J. R. and J. A. make claim as Assignees under the said Commission of B. And also reciting, That whereas for the ending of all the Matters in Difference, they the said J. R. J. A. and W. B. had by their several Writings

*Writings Obligatory dated, &c. and the Condi- Bonds, &c.*  
*tions of the same nominated, &c. the said F.*  
*Drew, Arbitrator, to arbitrate, &c. of and con-*  
*cerning all and all, &c. (and referring there-*  
*to.) And also reciting, That whereas be the*  
*said Francis Drew had accepted and taken on*  
*himself the Determination of the said Controver-*  
*sies, and having heard and weighed the Allega-*  
*tions and Reasons of all the said Parties, had*  
*thereupon awarded, ordered and adjudged, as*  
*follows, to wit, that the said J. R. and J. A.*  
*should within one Month after Date of the said*  
*Award, pay the said Sum of 100 l. and Interest,*  
*to the said S. Wooton. And also the said Sum*  
*of 50 l. and Interest, to the said Anne Pope.*  
*And as to the 100 l. and Interest, due by the*  
*above mentioned Writing Obligatory to Abraham*  
*Trout deceased, and since his Death, to J. P. his*  
*Executor, he awarded, that that Debt should*  
*stand as it stood before such Mortgage, and as*  
*if such Mortgage had never been. And that the*  
*said W. B. should within six Days after the Date*  
*(Delivery) of the said Award, deliver the said*  
*Indenture of Mortgage to the said J. R. and J.*  
*A. or to one of them, to be cancelled; and that*  
*W. B. should within the same Month pay, or*  
*cause to be paid to the said J. R. and J. A. the*  
*Sum of 15 l. for Goods which they had in their*  
*Hands, which were J. B's and for Costs of a Suit*  
*between the said J. R. &c. touching the same*  
*Goods. And further, That the said Suit, and*  
*all other Causes and Controversies between the said*  
*J. R. &c. should cease and be determined, &c.*

*The Matters  
 awarded.*

*Note.*

*And he the said W. B. protesting that they,*  
*the said J. R. and J. A. (or either of them)*  
*have not perform'd any thing whatsoever of*  
*the*

*Protestando.*

*Bonds, &c.* the said Premises, in the said Award contained, on their Parts to be perform'd, in Fact  
*Averment.* faith, That they the said *J. R.* and *J. A.* or either of them, within one Month after the making (and Delivery) of the said Award, ~~have not nor hath paid~~ to the aforesaid *S. Wootton*, the aforesaid Sum of 100 l. and the Interest thereof due to her as aforesaid; nor have they the said *J. R.* and *R.* nor hath either of them, within two Months after the Date of the same Award sufficiently indemnified, &c. the said *W. B.* against the said Writing Obligatory of the said *S. W.* according to the Form and Effect of the (Arbitrament) Award aforesaid. And this he is ready to aver; whereof he prays Judgment; and that his Debt aforesaid, together with his Damages, by Occasion of the Detention of that Debt may be adjudged to him.

*Rejoinder.*

And the said *J. R.* faith, That after the making of the Award, *he paid to the said S. W.* the said 100 l. and all the Interest (then) to her Due, *to wit*, at *H.* aforesaid (in the County of *D.* aforesaid.) And this he is ready to aver; whereof he prays Judgment, and that the aforesaid *W.* may be barred from having his said Action against him the said *John*.

*To which Rejoinder there was a special Demurrer for Cause, to wit.*

*Special Demurrer.*

And the aforesaid *W. B.* faith, That the said Plea of the aforesaid *J. Rood* above, by rejoining pleaded, and the Matter in the same contained are insufficient in Law to preclude

preclude (bar) him the said *W.* from having *Bonds, &c.*  
 his said Action against him the said *J.* and  
 that he hath no Need, nor is he by the Law  
 of the Land bound to answer to that Plea, in  
 Manner and Form pleaded. And this he is  
 ready to aver; wherefore for Want (Default)  
 of a sufficient Plea of the said *J. R.* in this  
 Particular, he the said *W.* prays Judgment,  
 and his said Debt, together with Damages by  
 Occasion of the Detention of that Debt, to  
 be adjudged to him, &c. And for Causes of *Causes of De-*  
 Demurrer in Law, he the same *W.* according *murrer.*  
 to the Form of the Statute in such Case made  
 and provided, shews to the Court here, and  
 saith, That the said *J.* by his said Rejoinder,  
 doth not shew or alledge, that the aforesaid  
*J. R.* did within one Month after the making of  
 the said Award, pay to the said *S. W.* the said  
 Sum of 100 l. and the Interest thereof due to  
 her: Nor doth he the said *J.* shew when he paid  
 the said Sum of Money, or the Interest thereof,  
 to her the said *S.* And that the said Rejoin-  
 der of the said *J.* is a Departure from his said  
 Plea above pleaded in Bar; and that the said *J.*  
 hath not concluded his said Rejoinder to the  
 Country, as in this Case he ought to have conclu-  
 ded that Plea.

Note.

*And note, on the Defendants joining in the  
 Demurrer, the Cause was argued in C. B. June  
 the 9th 1716, and Judgment for the Plaintiff.  
 See also the Cases of Prideaux against Robins,  
 Trin. 1 Geo. 1. in C. B. and Clark against  
 Winkworth, Hill. 3 Geo. 1. in C. B. the like De-  
 clarations and Judgments on Demurrer; and the  
 like of Newcombe against Newcombe, Trin.  
 2 Geo. 1. and Franks and Eastland, Tr. 3 Geo. 1.  
 A De-*

Bail

Bonds.

*A Declaration in Debt by the Assignees of  
a Bail-Bond.*

In C. B.  
By Assignees of  
a Bail-Bond.  
Trin. 3 Geo. 1.

\* i. e. Stat.  
4 Annæ, c. 16.  
For Amend-  
ment of the  
Law.

*Recital of the  
Latitat.*

*Doumouthshire to wit.* **W**. T. late of N. in  
the County a-  
foresaid, Esq; otherwise named *W. T.* of the  
Town of N. in the County of M. Esq; was  
summoned to answer to R. T. and A. B. the  
Assignees of *W. J.* Esq; the late Sheriff of  
the County aforesaid, Esq; according to the  
Form of the Statute \* in such Case lately  
made and provided, of a Plea, That he ren-  
der to the same R. and A. 600 l. which he  
owes to him, and unjustly detains; and  
whereof they the said R. and A. by H. S.  
their Attorney, say, That whereas one P. C.  
Esq; after the first Day of Trinity Term, in  
the Year of the Lord 1706, to wit, on the  
sixth Day of November, in the third Year of  
the Reign of the Lord the now King, at M.  
in the County aforesaid, was arrested at the  
Suit of them the said R. and A. by Virtue of  
a certain Writ of the said Lord the King,  
called a *Latitat*, before that Time sued out of  
the Court of the same Lord the King, before  
the King himself, being then (held) at *West-*  
*minster*, in the County of M. and directed  
and delivered to the said Sheriff. By which  
said Writ the said Sheriff was commanded to  
take the said P. C. and keep him safely, so  
that the same Sheriff should have his Body be-  
fore the said Lord the King, at *W.* on *Tuesday*  
next after the Morrow of *All-Souls* then next,  
to answer to the said R. and A. of a Plea of  
Trespas on the Case; and also of a Bill of  
them

**Bail  
Bonds.**

them the said *R.* and *A.* as Executors of the Testament of *T. S.* deceased, against him the said *P.* for 300 *l.* of Debt, to be exhibited according to the Custom of the said Court of the said Lord the King, before the King himself. And whereas he the said *W. J.* being then Sheriff of the said County of *M.* as aforesaid, did then and there take Bail for the Appearance of him the said *P.* in the Form following, *to wit,* He the said *P.* and the said *W. T.* and one *W. P.* as Sureties for him the said *P.* on the fifth Day of *November*, in the aforesaid third Year of the Reign of the said Lord the now King, at *M.* aforesaid, in the said County of *M.* by their Writing Obligatory, acknowledged, and every of them did thereby acknowledge to be held bound to the said *W. J.* then Sheriff of the said County of *M.* by the Name of *W. J.* Esq; Sheriff of the County of *M.* in the said 600 *l.* to be paid to the said Sheriff or his Assignes, when he should be thereto required; with a Condition to the same Obligation, subscribed, That if the said *P. C.* should appear before the Lord the King, at *Westminster*, on the said *Tuesday* next after the Morrow of *All-Souls*, to answer to the said *R.* and *A.* of a Plea of Trespass; and also of the Bill of them *R.* and *A.* as Executors of the Testament of *T. S.* deceased, for 300 *l.* of Debt, that then that Obligation should be void, &c. as by the said Writing Obligatory and Condition, Relation being thereto had, may more fully appear; and (that) he the said *P.* did not appear before the said Lord the King, at *Westminster* aforesaid, on *Tuesday* next after the Morrow of *All-Souls*, in the Condition aforesaid, mentioned

*Arrest and  
Bail.*

*Bail-Bond.*

**Bail  
Bonds.**

*The Sheriff's  
Assignment.*

*Profert of the  
Sheriff's  
Bond, &c.*

tioned according to the Form and Effect of that Condition, whereby that Writing Obligatory became forfeited; and that on the twenty ninth Day of *November*, in the Year of the Lord 1716, he the aforesaid *W. J.* being then Sheriff of the County of *M.* aforesaid, at *M.* aforesaid, at the Instance of them the said *R.* and *A.* the Plaintiffs, in that Suit, assigned to them the said *R.* and *A.* the same Writing Obligatory, according to the Form of the said Statute in such Case thereof lately made and provided, by indorsing that Assignment upon the said Writing Obligatory, under his Hand and the Seal of his said Office of Sheriff of the said County of *M.* in the Presence of two credible Witnesses. By Reason of which said Premises made according to the Form of the said Statute, in such Case thereof lately made and provided, an Action hath accrued to them the said *R.* and *A.* as Assignees of the said *W. J.* to demand and have of the said *W. T.* the said 600*l.* yet he the said *W. T.* tho' often thereto requested, hath not paid (render'd) the said 600*l.* to the said *W. J.* the said late Sheriff of the said County of *M.* or to the said *R.* or *A.* or to either of them. But hath hitherto wholly denied (refused) and still doth deny (refuse) to render (pay) the same to them, or to any, or to either of them; whereof they say, that they are the worse, and have Damage to the Value of 20*l.* and thereof they bring their Suit. And they the said *R.* and *A.* bring here into Court, as well the Writing Obligatory aforesaid, as the Indorsment aforesaid, which do testify the said Debt, and the Indorsment aforesaid, whose  
respective

# **In DEBT, on**

respective Dates are on the Days, and in the Years above specified.

335

**Bail  
Bonds.**

*To this Declaration was a special Demurrer assigning these Causes, viz.*

That it is not alledged in the said Declaration, that the said Bail was taken upon the said Writ; and that it is not alledged in Fact in the same Declaration, That any Writing Obligatory was made, but only argumentatively: And also that it is not aver'd, that the Plea (Suit) in the Condition aforesaid mention'd, and the Plea (Suit) in the Writ aforesaid mention'd, is one and the same Plea (Suit) and also that the Names of the Witnesses to the Assignment of the Writing Obligatory aforesaid, are not mentioned in the said Declaration, &c.

*Causes of Demurrer.*

Tocket & al.  
vers. Thomas.

*But notwithstanding these Causes I find Judgment was for the Plaintiff, November the 14th 1717. And the same Day the like Judgment was given in another like Case (i. e. Tocket & al. vers. Cecil) on the like Demurrer. And in Hillary Term following, (i. e. 7 Feb. 1717, in the Case of Bailey vers. Stock, & al.) where the Cause of the Demurrer is, That it doth not appear by the Declaration in what County the Bail was taken, on the said Taking and Arrest; nor in what County the Writing Obligatory (i. e. the Bail-Bond) was made, nor in what County the Venue was laid; yet Judgment for the Plaintiff.*

Tocket & al.  
vers. Cecil.

See 1 Leon. 72.  
2 Brown. 239.

**A De-**

**Bail  
Bonds.**

*In B. C.  
On a Bail-  
Bond by the  
Sheriff in his  
own Name.*

*A Declaration, &c. on a Bail-Bond, where  
the Action is brought by the Sheriff in his  
own Name; and the Defendant pleads,  
that the Bond was not taken by Colour  
of his Office, according to 23 H. 6. Cap.*

*London to wit. G. W. late of the Borough  
of Warwick, in the Coun-  
ty of Warwick, Gentleman, otherwise na-  
med, (&c. as in the Bond) was summoned to  
answer to W. D. Esq. Sheriff of the same  
County of W. of a Plea, that he render to  
him 80 l. which he owes to him, and unjust-  
ly detains. And whereof the same W. by  
T. C. his Attorney, saith, That whereas he  
the said G. on the 28th Day of April, in the  
second Year of the Reign of the Lord the  
now King, at London in the Parish of the  
blessed Mary of the Arches (Bows) in the Ward  
of Cheap, by his certain Writing Obligatory,  
had acknowledged himself to be held to the  
said W. in the said 80 l. to be paid to the same  
W. when he should be thereto required; yet  
he the said G. altho' often required, hath not  
yet (paid) render'd the said 80 l. but hath hi-  
therto wholly refused, and still doth refuse to  
render the same to him; whereof he saith  
that he is the worse, and hath Damage to the  
Value of 20 l. and thereof he brings his Suit,  
and produces the Bond (&c. as usual.)*

*The Plea.*

*Oyer, &c.*

*And the aforesaid G. by W. S. his Attor-  
ney, comes, and (without a Defence, which  
here seems the most proper Way) prays Oyer of  
the said Writing Obligatory, and it is read to  
him:*

him! He also prays *Oyer* of the Condition of *Bail Bonds* the same Obligation, and it is read to him in these Words, *to wit* (originally in Latin) *The Condition of this Obligation is such, That if the above bounden G. W. shall appear before the Justices of the said Lord the King, at Westminster, on the Morrow of the Lord's Ascension, to answer to Fr. Hole, of a Plea of Trespas on the Case, upon an Assumpsit, to the Damage of him Francis 40 l. That then this present Obligation to be void, and of no Force, or else to stand and remain in its full Force and Virtue.* Which being read and heard, the same G. saith, That he by (Virtue) Force of the said Writing Obligatory, ought not to be charged with the Debt aforesaid, because he saith, That in a Statute made at a Parliament of the Lord Henry the Sixth, late King of England, held at Westminster in the County of Middlesex, on the 25th Day of February, in the 23d Year of his Reign, it was among other Things enacted by Authority of the same Parliament, *to wit*, (Sheriffs, Under-Sheriffs; Sheriffs or Under-Sheriffs Clerks, &c. not to take any Thing by Colour of their Office, besides the Fees there appointed; and also not to take, or cause to be taken, any Bond or Obligation by Colour of his Office, but according to the Form therein prescribed. (See the Act) As by the same Act may among other Things more fully appear. And he the said J. saith, That after the making and publishing of the said Act, *to wit*, at the Time of the making of the said Writing Obligatory, he the said W. D. Esq; was Sheriff of the said County of W. And that neither he the said W. D. nor any Deputy or Servant of him the said W. D. had

Note.

**Part Bonds** at the Time of the making of the said Writing Obligatory, or at any Time before the making of the said Writing Obligatory, received, or had any such Writ or Process against him the said *G. W.* at the Suit of the said *F. H.* as in the said Condition of the said Writing Obligatory is above-mentioned. And that he the said *W. D.* did at *London* aforesaid, in the Parish and Ward aforesaid, being then and there Sheriff of the said County of *Warwick*, take the said Writing Obligatory of him the said *G.* by Colour of the said Office of him the said *W. D.* as Sheriff of the said County of *Warwick*; but not by the Name of Office of him the said *W. D.* Esq; Sheriff of the said County of *W.* against the Form of the said Statute, and this he the said *G.* is ready to aver, whereof he prays Judgment, if he by Force of the said Writing Obligatory ought to be charged with the Debt aforesaid

*Replication.*  
The Plaintiff  
prays that the  
Bond may be  
inrolled.

The Form of  
the Bond.

And upon this (hereupon) he the said *W. D.* prays, That the said Writing obligatory brought here into Court, the Condition whereof is above specified may be inrolled, and it is inrolled in these Words, *Noverint universi per presentes nos Georgium Webb de Burgo Warwici in Com. Warw. Gent. Johannem Tarver de Burgo predict, Ar. & Johannem Fairfax de Burgo pred. Mercer, teneri & firmiter obligari Willielmo Dixwell, Ar. vic. Com. predict. in octogint. Libris bona & legalis Monetæ Magnæ Brit. solvend' eidem Willielmo aut suo certo Attornato, Executoribus, Administratoribus vel Assign' suis, ad quam quidem solutionem bene & fideliter faciend' obligamus nos & quemlibet nostrum*

*strum per se pro toto & in solido Heredes, Execu-  
tores, & Administratores nostros, & cujuslibet no-  
strum firmiter per presentes sigillis nostris sigillat'*  
*Dat. 28vo. die Aprilis, Anno Regni Dni. Georgij*  
*Dei. Gra. Mag. Brit. &c. Reg. &c. Ann. Dom. 1716.*

Which Obligation being so inrolled, he the said  
*W.* saith, That he, for any Thing before al-  
ledged, ought not to be barr'd from having his  
Action aforesaid, because he saith, That in  
*Easter Term*, in the second Year of the Reign  
of the Lord the now King, a Writ of the said  
Lord the now King, called a *Testatum Capias*,  
issued out of the Court of the said Lord the now  
King of the Bench here, being at *W.* in the  
County of *Middlesex*, directed to the then  
Sheriff of the County of *Warwick*, he the  
same *W.* being at the Time of issuing the  
same Writ, and before, and until, and after  
the Return of that Writ, Sheriff of the said  
County of *Warwick*, by which said Writ he  
the said Lord the now King, commanded  
him the said then Sheriff of the said County  
of *Warwick*, That he should take the said  
*G. W.* if, &c. and keep him safely, so that  
he might have his Body before the Justices of  
the said Lord the now King of the Bench  
here at *Westminster*, on the Morrow of the  
Lord's Ascension in the same Term, to an-  
swer to *Francis Hole* of a Plea of Trespass on  
the Case upon Assumpsit (Promise) to the  
Damage of him *Francis* 40*l.* and that the  
same Sheriff should then have there that  
Writ; Which said Writ of *Testatum Capias*, af-  
terwards, and before the Return thereof, to  
wit, on the 28th Day of *April*, in the second  
Year aforesaid, was delivered to the said *W.*  
the then Sheriff of the said County of *War-*

*The issuing of  
the Testatum  
Capias.*

*to Nat said  
when he re-  
ceiv'd it.*

## Declarations, &amp;c.

Bail Bonds

*wick*, to be executed in due Form of Law, which said Writ he the said Sheriff then received and had, and by Virtue of that Writ he the foresaid *G.* on the said 28th Day of *April* aforesaid, was arrested by the same *W.* being then Sheriff of the said County of *W.* and for the Appearance of him the said *George*, according to the Intention and Demand of the said Writ, he the said *W.* afterwards, *to wit*, on the said 28th Day of *April*, in the second Year aforesaid, at *London* aforesaid, in the Parish and Ward aforesaid, being then Sheriff of the said County of *Warwick*, took (and received) the said Writing Obligatory of the said *G.* by Colour of his the said *W.*'s Office of Sheriff of the said County of *Warwick*, in Manner and Form as by the same Writing Obligatory so inrolled as aforesaid, may more fully appear; and he prays, That this may be inquired by the Country.

*The Defendant Demurs for Cause.*

And the foresaid *George* saith, That the Plea of the said *W.* above, by replying pleaded, and the Matter in the same contained, in Manner and Form (as) pleaded, are not sufficient in Law for him the said *W.* to have his Action to be maintained against him the said *George*, and that he hath no need, nor is he bound by the Law of the Land in any Manner to answer to that Plea; and this he is ready to aver, wherefore for Default, (Want) of a sufficient Replication of the said *W.* in this Particular, he the said *George*, *as before*, &c. prays Judgment, and that the said *W.* may be barr'd from having his said Action against him the said *G.* And for Causes of Demurrer in Law in this Particular,

lar, he the said *George* according to the Form **Bail Bonds**  
of the Statute in such Case lately made and  
provided, shews and demonstrates to the  
Court here, these that follow, *to wit*, In  
that, That it does not appear by the said Plea  
above, in Replying pleaded by the said *W.*  
nor is it (therein, &c.) alledged, That the  
said *W.* Sheriff of the said County of *War-*  
*wick*, arrested the said *G.* by Virtue of the  
said pretended Writ of *Testatum Capias* within  
the said County of *W. &c.* and for that by  
the said Declaration it plainly appears that  
the said *W.* Sheriff of *Warwick* aforesaid,  
took the said Writing Obligatory at *London*  
aforesaid, in the Parish and Ward aforesaid,  
without the said County of *Warwick*, and  
(without) the Bailiwick of the said Sheriff,  
and for that, that by the Confession of the  
said *W.* by his Plea above, in Replying  
pleaded, it plainly appears to the Court here,  
that he the said *W.* took the Writing Obliga-  
tory aforesaid, of him the said *G.* by Co-  
lour of the Office of him the said *W. D.*  
Sheriff of the County of *Warwick* aforesaid,  
in Manner and Form as he the said *W.* hath  
(himself) by Replying above alledged

*Note.*

*Note.*

*Note.*

*Note; On the Plaintiff's joining in Demurrer,*  
*this Cause was argued on Monday the 26th of Nov.*  
*1716. But the Court being still doubtful, ordered*  
*it to be further argued in the following Term.*

*Quere what was the Event?*

By Admini-  
strators.

*A Declaration in Debt on an Obligation;  
brought by Administrators against the  
Obligor.*

In C. B.  
By Admini-  
strator, &c.  
against the  
Obligor.  
Trin. 3. G. 1.

Note.

Wiltshire to wit. **R.** Towns, late of Steeple-  
ton, in the County of  
Dorset, Esq; otherwise named R. F. of T. in  
the County of D. Esq; was summoned to an-  
swer to R. Woodford, Gent. and E. his Wife,  
and to R. D. Spinster, and K. D. Spinster,  
which said E. R. and K. were duly and law-  
fully constituted (appointed) Administrators  
of all the Goods and Chattels which were of  
E. D. Esq; at the Time of his Death, who  
dyed Intestate, &c. of a Plea that he render  
to them 2000 l. which he unjustly detains from  
them; and whereof they the said R. W. and  
E. R. and K. by W. M. their Attorney say,  
That whereas he the said R. Townes, such a  
Day, Year and Place in the said County of  
W. by his certain Writing Obligatory ac-  
knowledged himself to be held (bound) &c.  
to the said E. in his Life, in the said 2000 l.  
to be paid, &c. yet he the said R. F. had not  
paid the said 2000 l. to the said Edward in  
his Life, or to the said Richard Woodford and  
Eliz. and R. and K. or to any or either of  
them, since the Death of the said Edward, to  
which said Eliz. and R. and K. the Admini-  
stration of all the Goods and Chattels which  
were of the foresaid Edw. at the Time of his  
Death, were after the Death of the said Edw.  
committed by W. by Divine Providence Arch-  
bishop of C. Primate and Metropolitan of all  
England, on such a Day in such a Year (at  
such

*such a Place*) But tho' often required, hath wholly refused to render the same, to and unjustly detains the same from the said E. in his Life, and the said R. W. E. R. and K. since his Death, and still doth refuse to render the same to them the said R. W. E. R. and K. and all and every of them, whereof they say, that they are the worse, and have Damage to the Value of 10 l. and thereof they bring their Suit; and they also bring here into Court, as well the said Writing Obligatory aforesaid, testifying the said Debt in the Form aforesaid, which is dated the Day and Year abovesaid, as also the said Letters Administratorial of the said Archbishop, which testify the Commission of the said Administration in the Form aforesaid.

Administra-  
tors.

*Proferet the  
Bond and Let-  
ters of Admi-  
nistration.*

To this (after Oyer of the Bond and Condition) the Defendant pleads, That he had paid 1000 l. to the Testator in his Life-time, in full Discharge of the said 2000 l. which he the said Testator accepted and gave the Defendant an Acquittance for the same, &c. But this Plea was adjudged Nugatory, and therefore Judgment was for the Plaintiff, Nov. the 15th 1717.

*Plea.*

By Execu-  
tors.

*A Declaration in Debt on Bond by a Husband and his Wife Executrix of the Obligee.*

In C. B.  
By a Husband  
and his Wife  
an Executrix.

Note.

Profert of the  
Bond and Let-  
ters Testamen-  
tory.

London to wit. **D.** H. late of London, Upholsterer, otherwise called (named) D. H. Citizen and Upholder of London, was summoned to answer to C. M. and A. his Wife, Executrix of the Testament of W. C. of a Plea, That they render to them 1000 l. which he unjustly detains; and whereof they the said E. and A. by J. G. their Attorney say, That the foresaid D. in the Life of him W. to wit, (the Day and Year, and Parish and Ward) by his Writing Obligatory acknowledged himself to be bound to the said W. in the said 1000 l. to be paid to him when he should be thereof afterwards required, yet he the said D. tho' thereto often required, had not rendered that Sum (Money) to the said W. in his Life, or to the said C. and A. or to either of them since his Death, but hath hitherto wholly (denied) refused to render the same and still doth refuse to render it, and unjustly detains the same from the said C. and A. and thereof they bring their Suit. And they the said C. and A. bring here into Court as well the said Writing Obligatory, testifying the said Debt in the Form aforesaid, which is dated the Day and Year aforesaid, as also the said Letters Testamentary of the said W. whereby it sufficiently appears to the Court here, the the said Anne to be Executrix of the said Testament, and to have the Administration thereof.

A Dec

*A Declaration in Debt on a Bond against an Executor.*

Leicestershire to wit. **E** *Elizabeth Barker*, late of *G.* in the County aforesaid, Widow and Executrix of *W. B.* her late Husband deceas'd, lately named *W. B.* (Ec. as in the Bond) was summoned to answer to *V. P.* of a Plea, that she render to him 140 l. which she unjustly detains, Ec. and whereof the same *V. P.* the now Plaintiff by *J. S.* his Attorney saith, That whereas he the said *W. B.* deceased, in his Lifetime, to wit, on the 10th Day of *October*, in the first Year of the Reign of the Lord the now King, at *L.* in the County aforesaid, by his certain Writing Obligatory had acknowledged himself to be bound to the said *V. P.* (the now Plaintiff) in the said 140 l. to be paid to the said *V. P.* (the now Plaintiff) when he should be thereto required, yet he the said *W. B.* deceased, in his Life, or the said *E. B.* his said Widow and Executrix since his Death, tho' often required, have not paid, Ec. (*vide ante*) with a Profert of the Bond.

*In C. B.  
Debt against  
an Executrix.  
Trin. 4. G. 1.*

And the foresaid *Elizabeth* by *T. N.* her Attorney, comes and defends the Force and Injury, when, where, Ec. and saith, That he the said *W. B.* did not in his Life owe the said 140 l. to the said *V. P.* nor any Penny thereof, in Form as the said *V. P.* hath above declared, and hereof she the said *Elizabeth* puts herself on the Country, Ec.

*Plea nil debet.*

To

Against  
Defts.

To this there was a general Demurrer, &c.  
and thereon Judgment for the Plaintiff, Nov.  
18th, 1718.

*A Declaration in Debt on Bond brought  
(by an Attorney) against the Heir and  
Devisees, who plead, nothing by Descent,  
&c.*

In C. B.  
Debt on Bond  
against the  
Heir and De-  
visees.  
Hill. 3 G. 1.  
Rot. 671.  
by an Attor-  
ney.

*Nottingham-Town to wit, F. Armstrong, late  
of H. in the  
County of Northumberland, Gent. Son and  
Heir of J. A. Gent. lately called (named)  
J. A. of H. Esq. as in the Bond, and R. Hun-  
ton, late of P. in the County of Cumberland,  
Esq; J. Aynesley, late of H. in the foresaid  
County of Northumberland, Gent. T. B. late  
of H. in the said County of N. Gent. De-  
visees of the said J. A. of certain Tenements  
and Hereditaments which were of the same  
J. A. at the Time of his Death, were sum-  
moned to answer to Henry Morris, Gent. an  
Attorney of the Court of the Lord the now  
King of the Bench (at Westminster) of a Plea,  
That they render to him 500 l. which they  
owe to him (and unjustly detain) and where-  
of he the same H. in his proper Person saith,  
That whereas the said J. A. the Father of  
the said F. (whose Heir the said F. is) in his  
Life, to wit, on the 13th Day of April, in  
the 8th Year of the Reign of the Lady  
Anne, late Queen of Great Britain, at the  
said Town of Nottingham, in the County of  
the said Town of Nottingham, by his certain  
Writing Obligatory had acknowledged him-  
self to be held (bound) to the said H. in the  
said*

said 500 *l.* to be paid to the said *H.* when he should be thereof (thereto) required; and for the said Payment well and faithfully to be made, he the said *J. A.* had by the said Writing (Obligatory) bound himself and his Heirs; yet he the said *J. A.* in his Life, or they the said *F. A. R. H. J. A. T. M.* and *T. B.* to which said *R. H. J. A. T. M.* and *T. B.* and to their Heirs, he the said *J. A.* by his last Will in Writing made and appointed at the Town of *N.* aforesaid, had in his Life, *to wit*, on or about the 25th Day of *March*, in the Year of the Lord 1692, bequeathed and devised his (certain) Lands, Tenements and Hereditaments after his Death, tho' often requested (by the said *H.*) *to wit*, on such a Day, &c. at such a Place, &c. have not rendered, nor hath any of them rendered the said 500 *l.* to the said *H.* but they and every of them have wholly refused, and hitherto do refuse to render the same to him, whereof he saith, That he is the worse, &c. (Damages only 120 *l.* and no Profert, &c.

And the said *F. A.* by *J. M.* his Attorney comes and defends the Force and Injury, when, where, &c. and saith, That he ought not to be charged with the said Debt, as Son and Heir of the said *J. A.* deceased, by Virtue of the said Writing, because he saith, That he hath no Lands or Tenements by Hereditary Descent from the said *J. A.* his Father in Fee-simple (or otherwise) or which should have descended to the same *F.* in Fee-simple (or otherwise) from the said *J. A.* his Father, nor had (he any such Lands or Tenements) on the Day of suing out the Original

*The Heir  
Pleads Riens  
per Descen-  
tum.*

**By Attor-  
ney.**

*The Devisees  
Plead Quod  
non Devisa-  
vit. Q.*

ginal Writ of the said *H.* nor at any Time afterwards, and this he is ready to aver, whereof he prays Judgment, if he ought to be charged with the said Debt by Virtue of the Writing aforesaid.

And the foresaid *R. H. J. A. T. M.* and *T. B.* by *G. W.* their Attorney come and defend the Force and Injury, when, where, &c. and say, That the said *H. M.* ought not to have his Action thereof against them, because they say, that the foresaid *J. A.* deceased, did not by his last Will in Writing Devise or bequeath to them the said *R. H. J. A. T. M.* and *T. B.* or to any of them, any Lands, Tenements, or Hereditaments of him the said *J. A.* as he the said *H. M.* hath above declared against them, and this they are) ready to aver, whereof they pray Judgment, if he the said *H. M.* ought to have his said Action against them.

*Replication,  
quoad F's  
Plea. That he  
had by Decla-  
ration Issue  
thereon.*

And the said *H. M.* as to the said Plea of the said *F. A.* above pleaded in Bar saith, That he for any Thing by him the said *F.* in the same Plea alledged, ought not to be precluded, (barred) from having his said Action against him the said *F.* because he saith, That on the Day of suing out the Original Writ of the said *H. to wit,* on the first Day of *February*, in the first Year of the Reign of the Lord the now King; he the said *F.* had divers Lands and Tenements by Hereditary Descent from the said *J. A.* his Father in Fee-simple, *to wit,* at the Town of *Nottingham* aforesaid, and prays that this may be inquired by the Country, and so doth the said *F.* likewise, &c.

And

And he the said *H. M.* as to the Plea of *Against an*  
the said *R. H. J. A. T. M.* and *T. B.* above  
pleaded in Bar, saith, That he for any Thing  
by them in the same Plea alledged, ought  
not to be precluded (barred) from having his  
said Action against them the said *R. J. F. T.* *And Quod*  
and *T.* because he saith, That the said *J. A.* *the Devises.*  
hath by his last Will in Writing devised to  
them the said *R. H. J. A. T. M.* and *T. B.* *That the*  
certain Lands, Tenements and Heredita- *Testator De-*  
ments of him the said *J. A.* as he the said *viliavit.*  
*H. M.* hath above declared against them, and  
he prays that this also may be inquired by  
the Country.

And they the said *R. J. T.* and *T.* say, *The Devises*  
That the Plea of the said *H.* above, by Re- *Demur, &c.*  
plying pleaded, and the Matter therein con-  
tained are not sufficient in Law, for him the  
said *H.* to have his said Action thereof to be  
maintained against them the said *R. J. T.* and  
*T.* whereto they the said *R. J. T.* and *T.* have  
no need, nor are they bound by the Law of  
the Land in any Manner to answer, and this  
they are ready to aver; wherefore for De-  
fault of a sufficient Replication in this Parti-  
cular, they the said *R. J. T.* and *T.* pray  
Judgment as before, and that he the said *H.*  
may be barred (precluded) from having his  
said Action thereof against them the said *R.*  
*J. T.* and *T.*

And the foresaid *H.* In that he hath al- *Joinder,*  
ledged sufficient Matter in Law in his said  
Plea above, in replying pleaded, for him the  
said *H.* to have his said Action to be main-  
tained against them the said *R. J. T.* and *T.*  
as

By Attor-  
neys.

Cur. Advi-  
sare, &c.

Continuance.

A Venire a-  
warded to try  
the Issue.

Form of a  
Venire.

as he is ready to aver, (which said Matter they the said *R. J. T.* and *T.* do not deny, nor any way answer thereto, but do altogether refuse (waive) the said Verification) therefore as before, he prays Judgment against them the said *R. J. T.* and *T.* and his said Debt, together with his Damages to be adjudged to him, &c. And because the Justices here will advise themselves of and concerning the Premisses, whereof he the said *H. M.* and the said *R. J. T.* and *T.* have above put themselves in Judgment of the Court here, before they render Judgment thereof, a Day is thereof given to the same Parties here, until from the Day of *Easter* in 15 Days, for hearing their Judgment thereof: In that, that the same Justices here are not yet advised thereof, &c.

And as to the Trial of the said Issue between him the said *H.* and the said *F. A.* (which is) above joined to be tryed by the Country. The Sheriff is commanded, That he cause to come here at the foresaid Term (Time) twelve free and lawful Men, &c. who are of no Affinity to either the Plaintiff or the Defendant, &c. (as usual in awarding *Venires*) and it seems, That on Trial of the Issue a Verdict and Judgment was for the Plaintiff. *See Cro. Car. 219.*

Note, The Form of a Venire for a Trial is thus:

George the second, by the Grace of God King of Great Britain, France and Ireland, Defender of the Faith, and supream Head of the Church of England, in all Causes Spiritual and Temporal. To the Sheriff of N. Greeting, We command thee, That thou Cause to  
come

**In DEBT (by an Attorney) against**

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come (if in *B. R.*) before us at *Westminster*, *An Heir.*  
on *Wednesday*, or other Week Day next after  
15 Days of *Easter*, &c. or (if in *C. B.*) before  
our Justices of the Bench at *W.* from the Day  
of *Easter* in 15 Days, twelve free and law-  
ful Men of the Body of this County (*except*  
*in Criminal Cases*) each whereof hath 10 *l.* of  
Lands, Tenements or Hereditaments by the  
Year at the least, by whom the Truth of the  
Matter may better be known, and who are  
not related by any Affinity either to *H. M.*  
the Plaintiff, or to *F. A.* late of *N.* in thy  
County; to make a certain Jury of the Coun-  
try, between the Parties aforesaid, concern-  
ing a Plea of Debt (*or as the Case is*) because  
as well the same *F. A.* as the said *H.* between  
whom the Contention thereof is, have put  
themselves (concerning that Matter) upon  
that Jury, and have thou then there the  
Names of the said Jurors, and this Writ: Wit-  
ness *Robert Lord Raymond* (or *Robert Eyre, Knt.*)  
at *Westminster*, such a Day, in the sixth Year  
of our Reign.

In *B. R.*

In *C. B.*

*A De-*

*On Leases.*

*A Declaration in Debt brought by a Dean and Chapter for Rent on a Lease for Years.*

*In C. B.  
On a Lease  
for Rent.  
Pas. 3 G. 1.*

*The Lease  
recited.*

London to wit. **E.** Downes, late of London, Gent. otherwise named *E. Downes* of *Gray's-Inn*, in the County of *Middlesex*, Gent. was summoned to answer to the Dean and Chapter of the Cathedral Church of *St. Paul's London*, of a Plea, That he render to them 54*l.* which he owes to them, and unjustly detains; and whereof they the same Dean and Chapter by *E. G.* their Attorney say, That whereas they the said Dean and Chapter of the said Church on the 27th Day of *Nov.* in the Year of the Lord 1696. at *London* aforesaid, in the Parish of the blessed *Mary, &c.* in the Ward of *Cheap*, by a certain Indenture then and there made between the said Dean and Chapter of the one Part, and the said *E. D.* by the Name of *E. D.* of *Gray's-Inn*, in the County of *M.* Gent. of the other Part (which other Part of the said Indenture (under the Hand and) sealed with the Seal of the said *E. D.* they the said Dean and Chapter bring here into Court, which is dated the same Day and Year) had demised to the said *E.* two third Parts (the whole in three Parts to be divided) of one Messuage or Tenement, situate and being in *Gray's-Inn-Lane*, in the Parish of *St. Andrew's Holbourn*, in the County of *Middlesex*, called or known by the Name of the *Pinder of Wakefield*, (&c. with divers other Particulars described

described as in the Lease, to hold for 21 Years, from *Michaelmas* past, &c. yeilding and paying therefore yearly during the said Term to the said Dean and Chapter, and their Successors, or to the Chamberlain (Treasurer) of the same Church for the Time being, the Rent or Sum of 6 *l.* of lawful Money, &c. payable quarterly at, &c. by Virtue of which said Lease he the said *E. D.* entred into the said Tenements and Appurtenances, and hath been possessed thereof for nine Years past, without paying any Rent; and that there is now due from him to the said Dean and Chapter for Rent and Arreas as aforesaid 54 *l.* which is still in Arrear and unpaid, whereby an Action is accrued to them the said Dean and Chapter, to demand and have of him the said *E.* the said 54 *l.* yet he the said *E.* tho' often required, hath not yet rendered the said 54 *l.* or any Part thereof to them the said Dean and Chapter, or to the Chamberlain (Treasurer) of the same Church, but hath hitherto wholly denied, and still doth deny to render the same to them, or to any of them, whereof they the said Dean and Chapter say, they are the worse, and have Damage to the Value of 100 *l.* and thereof they bring their Suit.

The Defendant pleads Payment for Part, *Plea.* and for other Part, *nil debet*, and Entry, before the Term expired, with divers other Particulars. But on a Demurrer thereto Judgment was for the Plaintiff, *May* the 17<sup>th</sup>, 1717.

## Judgments

*A Declaration in Debt on a Judgment, with  
a Plea of Bankruptcy, after Oyer of  
the Judgment.*

In C. B.  
On a Judgment and Oyer  
thereof.  
Hill. 2 Geo. 1.  
Rot. 1624.

*Middlesex to wit.* **T**. *Atkinson*, late of *Leeds*,  
in the County of *Y.*  
Merchant, was summoned to answer to *W.*  
*Lepton*, Gentleman, of a Plea, That he render to him 803 *l.* which he owes to him, and unjustly detains; and whereof he the said *W.* by *T. D.* his Attorney, saith, That whereas he the said *W.* in the Court of the Lady *Anne*, late Queen of *Gr. Brit.* at *West.* to wit, in *Trinity* Term, in the ninth Year of the Reign of the said late Queen, before *Thomas Trevor*, Knt. and his Companions, then Justices of the said Lady the then Queen, of the Bench here, to wit, at *Westminster*, had by Consideration of the same Court recover'd against the said *T. A.* as well a certain Debt of 800 *l.* as 60 *s.* which were adjudged to him the said *W.* in the same Court for his Damages, which he (hath) had, by Occasion of the Detention of that Debt; whereof he is (was) convicted, as by the Record, and the Process thereof, in the Court of the said Lord the now King of the Bench here residing, will (may) more fully and plainly appear. Which said Judgment remains in full Force and Effect, no way reversed or annulled, or satisfied. And he the said *W.* hath not yet followed any Prosecution of that Judgment, whereby an Action hath accrued to the same *W.* to demand and have of the said

said Thomas the said 803 l. yet he the said T. Judgment  
altho' often requested, hath not yet render'd  
the said 803 l. or any Part thereof, to the  
said W. but hath hitherto wholly (denied)  
refused, and still doth (deny) refuse to render the  
same to him; whereof he saith, that he is  
the worse (Ec. Damage to the Value of 10 l.)

And the aforesaid T. by G. B. his Attor- Defendant  
ney, comes and defends the Force and Inju- prays Oyer of  
ry, when, where, Ec. and prays Oyer of the Judgment.  
the said Judgment; and it is read to him in  
these Words, to wit, *The second Part of the Recital of the*  
*Pleas with the Warrants of Attorney thereof, Judgment.*  
*inrolled at Westminster, before Thomas Tre-*  
*vor, Knt. and his Companions, Justices of the*  
*said Lady the now Queen of the Bench, to wit,*  
*In the Term of Holy Trinity, in the ninth Year*  
*of the Reign of the Lady Anne, by the Grace of*  
*God, Queen of Great-Britain, &c. Roll. 1453.*  
*York County to wit, T. A. late of Leeds in the*  
*County aforesaid, Merchant, was summon'd to*  
*answer to W. Lepton, Gentleman, of a Plea,*  
*that he render to him 800 l. which he owes*  
*to him, and unjustly detains; and whereof*  
*he the said W. by T. D. his Attorney, saith,*  
*That whereas the said T. on the first Day of*  
*June, in the ninth Year of the Reign of the*  
*Lady Anne the now Queen, at L. in the*  
*County aforesaid, had borrowed of the said*  
*W. the said 800 l. to be paid to the said W. On a Mutua-*  
when he should be thereof afterwards requi- tus.  
red; yet he the said T. tho' often required,  
had not yet render'd to the said W. the said  
800 l. but hath hitherto wholly denied, and  
yet doth deny to render the same to him;

**Judgments** whereof he saith, that he is the worse, and hath Damage to the Value of 20 l. and thereof he brings (brought) his Suit, &c. And the said T. A. by J. M. his Attorney, comes (defends the Force and Injury, &c.) and the same Attorney saith, *That he is not informed by the said T. A. his Master, of any Answer for the said T. A. to be given to the said W. in the Plea aforesaid, and saith nothing further thereof; whereby he the said W. remains against the said T. thereof undefended. Therefore it is considered, that the said W. shall recover against the said Thomas his said Debt, and also his Damages, by Occasion of the Detention of that Debt to 60 s. adjudged by the Court here unto the said W. by his own Assent. And the said T. A. is in Mercy. Signed 7 Octob. 9 Anna.*

*This Parenthesis seems improper.*

*Judgment by Non sum informatus.*

*Bankruptcy pleaded.*

Which being read and heard, he the said T. saith, That he the said W. ought not to have or maintain his said Action thereof against him, because he saith, that the said T. A. after the said first Day of June (in the Year, &c. aforesaid) *to wit*, on the first Day of October, in the second Year of the Reign of the Lord the now King, at Westminster aforesaid, became a Bankrupt; and that the Suit or Cause of Action accrued to the said W. before the Time, wherein he the said T. so became a Bankrupt. And this he is ready to aver; whereof he prays Judgment, if the said W. ought to have or maintain his said Action thereof against him.

*Demurrer for Cause.*

And the aforesaid William saith, That the Plea of the said Thomas above pleaded in Bar,  
is

is insufficient in Law to bar the said *William* *Escapes.*  
*(Ec. as usual in Demurrer)* And for Causes of  
 Demurrer in Law, according to the Form of  
 the Statute in such Case lately made and pro-  
 vided, he the said *W.* sheweth and demon-  
 strates to the Court here these Causes follow-  
 ing, *to wit,* in that that the said *T.* hath con-  
 cluded his said Plea with a Verification of that  
 Plea, where he ought to have concluded it  
 with an Issue to be try'd by the Country;  
 and in that, that the said *T.* hath not (there-  
 in) directly shewn the Time when he first  
 became a Bankrupt, &c.

*Cause of De-  
 murrer.*

On arguing which, Tuesday the 24th of April,  
 1716, Judgment was for the Plaintiff.

*A Declaration in Debt against the Marshal  
 of B. R. for an Escape, after a Com-  
 mitment in Execution on a Habeas Cor-  
 pus on a Judgment in C. B.*

*Middlesex to wit.* *J. S.* complains of *D. Craw-*  
*J. ford, Esq;* Marshal of the  
*Marshalsea* of the Court of the Lord the now  
 King, before the King himself, being present  
 here in the said Court in his proper Person, of  
 a Plea, that he render to him 35 *l.* of lawful  
 Money of *Great-Britain*, which he owes to  
 him, and unjustly detains, for that, *to wit,*  
 That whereas he the aforesaid *J.* by the Name  
 of *J. S. &c.* did erewhile, *to wit,* in Trinity  
 Term, in the fifth Year of the Lord *George*,  
 now King of *Great-Britain*, in the Court of

*In B. R.  
 Against the  
 Marshal for an  
 Escape after  
 a Commitment  
 in Execution.  
 See Lilly 186.*

**Escapes.**

*The Recovery  
in C. B.*

*The Habeas  
Corpus.*

*The Commit-  
ment thereon  
in Execution.*

the said Lord the King of the Bench (at *Westminster*) before *P. King*, Knt. and his Companions, then Justices of the said Lord the King of the same Bench, at *Westminster*, recover against one *W. G.* late of *London*, Esq; 35 *l.* as well for his Damages, which he had sustained by Occasion of not performing of a certain Promise and Assumption of him the said *W.* lately made to the said *J.* as for his Charges and Costs laid out by him about his Suit in that Particular; whereof he the same *W.* was convicted, as by the Record and the Procefs (Proceedings) thereof residing (remaining) in the same Court of the said Lord the King of the Bench, doth more fully and plainly appear. And afterwards, *to wit*, on the 23d Day of *December*, in the sixth Year of the Reign of the said Lord the now King, by Virtue of a certain Writ of the said Lord the now King, of *Habeas Corpus cum Causa* (*Have thou the Body with the Cause*) duly issued out of the Court of the said Lord the King, before the King himself, at *Westminster* aforesaid, in the said County of *Middlesex*, bearing Date at *Westminster*, the 28th Day of *November*, in the fifth Year aforesaid, directed to the then Mayor, Aldermen, and Sheriffs of *London*; he the said *W.* was by *J. B. Bart.* and *J. T. Knt.* being then the Sheriffs of *London* aforesaid, brought in Custody before *R. B. Knt.* one of the Justices of the Lord the King, assigned for Pleas to be held in the Court of the said Lord the King, before the King himself at his Chamber, situate in *Serjeants-Inn* in *Chancery-Lane*, *London*, in the Parish of *St. Dunstan in the West*, in the Ward

Ward of *Farringdon Without*, and then and there (he the said *W.*) was by the Return of the said Writ of *Habeas Corpus*, charged among other Things in Execution, at the Suit of him the said *J. S.* for the Damages, Charges, and Coſts aforeſaid. And afterwards, *to wit*, on the ſame 23d Day of *December*, in the Year laſt aforeſaid, at *London* aforeſaid, in the Pariſh aforeſaid, was by the ſame Juſtice committed to the Cuſtody of the (aforeſaid *D. C.* the then and yet) Marſhal of the *Marſhalſea* of the ſaid Lord the King, before the King himſelf, charged among other Things in Execution, for (with) the Charges and Coſts aforeſaid, as by the Record of the ſaid Writ of *Habeas Corpus* (having the Body) of the ſaid *W.* and the Return thereof, and the Commitment of him *W.* in Execution, in the Court of the ſaid Lord the now King, before the King himſelf, at *Weſtmiſter*, remaining filed of Record, doth more fully and plainly appear. By Virtue of which ſaid Commitment, he the ſaid *D. C.* being then and yet Marſhal of the ſaid *Marſhalſea* as aforeſaid, did then and there receive and take the ſaid *W.* into his Cuſtody. And by Virtue of the ſame Commitment had (held) and detained the ſaid *W.* under his ſaid Cuſtody, in Execution for the ſaid Damages, Charges, and Coſts (ſo recover'd againſt him by the ſaid *J. S.* as aforeſaid) And he the ſaid *W.* being ſo in Cuſtody of the ſaid *D. C.* the ſaid Marſhal of the ſaid *Marſhalſea*, in Execution for the Damages, Charges, and Coſts as aforeſaid; he the ſaid *D. C.* afterwards, *to wit*, on the 24th Day of *December*, in the ſixth Year

*To the Mar-  
ſhal of B. R.*

*The Eſcape.*

Escapes.

Whereby the  
Action arises.

of the Reign of the said Lord the now King, he the said *D.* being then and yet Marshal of the said *Marshalsea*, as aforesaid, did, at *Westminster* aforesaid, in the said County of *Middlesex*, permit and suffer him the said *W.C.* freely and voluntarily to escape and go at large out of the Custody of him the said *D.C.* without the Licence (Leave) and against the Will of him the said *J.S.* (he the said *J.S.* not being then or yet any way paid or satisfied of the Damages, Charges, and Costs as aforesaid, or of any Parcel thereof) whereby an Action hath accrued (arisen) to the same *J.* to demand and have of the said *D.C.* the said 35 *l.* yet he the said *D.* tho' often requested, &c. hath not yet paid the said 35 *l.* to the said *J.* but hath hitherto refused, and still doth refuse to pay the same to him. *Ad Dampnum, &c.*

Note, in this Case on the Issue Non Debet, the Plaintiff had a Verdict, and the Marshal paid the Money.

Against the  
Warden of the  
Fleet, &c.

See the like Declarations, &c. against the Warden of the Fleet, &c. Lilly's Entr. 156, 157, 160, 161, &c.

*A Declaration in Debt on the Habeas Corpus Act, for 100 l. against the Gaoler, for denying to a State Prisoner a Copy of his Commitment.*

Surrey to wit. **J. F.** Gentleman, complains of **W. L.** in Custody of the Marshal, &c. of a Plea, That he render to him 100 l. of lawful Money of Great-Britain, which he owes to him, and unjustly detains; for that after the first Day of July, in the Year of the Lord 1679, he the said **J. F.** in the Vacation Time, and out of Term, to wit, on the 20th Day of March, in such a Year of the King, was at such a Place in the said County of *S.* taken and detained in Prison by the said **W. L.** without any lawful Warrant or Commitment (specially expressing the Cause of the said Commitment.) And whereas, afterwards, to wit, on such a Day, in such a Year of the King, at the Parish aforesaid, in the said County of *S.* he the said **J. F.** had demanded of the said **W. L.** a true Copy of the Warrant of his the said **J. F.**'s Commitment and Detention, by him the said **W. L.** in the said Prison. Yet he the said **W. L.** tho' often required by the said **J. F.** did not within the Space of six Hours then next following such Request and Demand, deliver to him the said **J. F.** (or to any other to his Use) any Copy of the said Commitment and Detention of him the said **J. F.** so in Custody of the said **W. L.** as aforesaid; but

In B. R.  
Against a Gaoler for denying to a State Prisoner a Copy of his Commitment.

## Declarations, &amp;c.

**By-Laws.** but did wholly neglect and omit to deliver that (said Copy) to him, against the Form and Effect of the Statute in such Case lately made and provided; whereby, and by Force of the said Statute, he the said *W. L.* hath forfeited 100 *l.* (and) for which, by Force of the same Statute, an Action is accrued to the said *J. F.* being the Party grieved, to demand and have of the same *W. L.* the said 100 *l.* Yet he the said *W.* tho' often required, had not paid the said 100 *l.* or any Part thereof, to the said *J.* but hath hitherto wholly refused, and still doth refuse, &c.  
*Ad Damnum* 100 *l.*

*A Declaration in Debt upon a By-Law of the Company of Stationers (for not accepting of the Livery, &c.)*

*In B. R. On a By-Law of the Company of Stationers. See Lilly 153.*

*Recital of their Letters Patent of Incorporation.*

**T**HE Master and Wardens and Community of the Mystery or Art of Stationers of the City of London, complain of *J. H.* in Custody of the Marshal, &c. of a Plea, That he render to them 40 *l.* of lawful Money of *Great-Britain*, which he owes to them, and unjustly detains; for that, *to wit*, That whereas the Lord *Philip* and the Lady *Mary*, late King and Queen of *England*, by their Letters Patent under the Great Seal of *England*, bearing Date at *Westminster* on the fourth Day of *May*, in the third and fourth Year of their Reign, had of their special Grace, and of their certain Knowledge and mere Motion, willed, given, and granted for themselves, *and the Heirs and Successors*

*Note.*

*Successors of the said then Queen, to their beloved and faithful Leiges, Thomas Dockwray, &c.* **By Laws.**  
 Freemen of the Mystry or Art of Stationers of the said City of London, and Suburbs of the same, That they for the future should be in Essence (Act) Fact (Deed) and Name, a Body Politick of itself for ever, and a perpetual Corporate Community (consisting) of one Master and two Bailiffs or Wardens, and Community of the same Mystry or Art of Stationers, of the City aforesaid; and that they should have perpetual Succession: And further, That they the said Lord the King, and Lady the Queen, had of their special Grace, and of their certain Knowledge and mere Motion, by the same their Letters Patents, ordained, created, erected, made and constituted the said T. D. to be Master of the said Mystry or Art of the Stationers of the said City, during one Year then next following; and the said *John Carwood* and *Henry Cooke* to be Bailiffs or Wardens of the same Mystry or Art of Stationers of the said City for one Year then next following. And the said *William Bonham, Richard Way, &c.* to be the Community of the same Mystry or Art of Stationers of the aforesaid City, &c. And further, That they the said Lord the King, and Lady the Queen, had by the same Letters Patent, ordained, created, erected, made, and constituted the said Master, Wardens, and Community, to be in *Act, Fact, and Name*, one Body (Politick) for ever; and one Corporate Community for ever (consisting) of one Master and two Bailiffs or Wardens, and a Community of the same Mystry

*A Master and Wardens, and Community appointed.*

*Vide supra.*

**By-Laws.** tery or Art of Stationers of the same City of London, to endure for ever really (*ad plenum*) fully (or effectually) and that they the said Master and Bailiffs, or Wardens, and Community, should for the future have perpetual Succession; and that they and their Successors for ever should be called, named, and known by the Name of *The Muster and Bailiffs, or Wardens, and Community of the Mystery or Art of Stationers of the City of London*; and should (might) by that Name plead, and be impleaded; answer, and be answered, in all and singular Matters, Suits, and Complaints, Actions, Demands, and Causes, before whatsoever Judges and Justices, and in whatsoever Courts and Places; and have a Common Seal for the transacting and dispatching of their Affairs, and for the sealing of all and singular their Deeds and Writings, any way touching or concerning their Affairs and Business (Negotiation.) And they the said Master, Bailiffs or Wardens, and Community, and their Successors, might from Time to Time make, ordain, and establish, for the good and sound Rule and Government of the Freemen of the said Art or Mystery, and of the Community aforesaid, Ordinances, Provisions, and Statutes, as often as they should think fit and convenient; so that those Ordinances, Provisions, and Statutes, were not in any Thing repugnant or contrary to the Laws or Statutes of this Kingdom, or to the publick Prejudice of the same Kingdom. And that they and their Successors for ever might (congregate) meet or assemble together in an honest and lawful Manner, for making of such

*Their Name of Incorporation.*

*Have a Common Seal.*

*Power to make By-Laws.*

such Statutes and Ordinances, and transacting ~~By Laws~~  
 other Affairs, to the Profit of the said Myf-  
 tery or Art of Stationers, and the Community  
 of the same, and for other lawful Causes,  
 as often as they should please, freely and  
 quietly, without any Molestation or Restriction  
 of the said Lord the King, and Lady the  
 Queen, or the Heirs and Successors of the  
 said Lady the Queen, or of any other, as by  
 the said Letters Patent inrolled, of Record in  
 the Court of the Chancery of the Lord the  
 now King, at *Westminster* (an Exemplification of  
 which said Inrollment, under the Great Seal of  
 the Lord *Charles* the Second, late King of *Eng-*  
*land*, &c. bearing Date at *Westminster*, on the  
 23d Day of *October*, in the 36th Year of his  
 Reign, they the said Master and Bailiffs, or  
 Wardens, and Community of the said Myf-  
 tery or Art of Stationers of the City of *London*,  
 do bring here into Court) may more fully and  
 plainly appear. And they the said Master  
 and Bailiffs, &c. do in Fact say, That after the  
 making of the said Letters Patents, and before  
 the exhibiting of this their Bill, to wit, such a  
 Day in such a Year (*May 24, 1694*) at *London*  
 aforesaid, at the Parish of *St. Martin Ludgate*,  
 in the Ward of *Farringdon Within*, they the  
 said Master, &c. being then and there assem-  
 bled for the good Government of the said  
 Freemen of the said Art or Myftery, and the  
 Community aforesaid, and their Successors,  
 did, among other Things, make and ordain  
 a certain Ordinance, no Way repugnant or  
 contrary to the Laws of this Kingdom, nor  
 any Way tending to the Prejudice of the  
 Commonwealth of *England*; that is to say,  
 That

Profert of an  
 Exemplifica-  
 tion of the  
 Letters Pa-  
 tents.

Note.

**By-Laws.**  
*The By-Law  
 made.*

*Note.*

*A Confirmation  
 thereof.*

That the Master and Wardens, and Assistants of the said Society, or the major Part of them in the Court of Assistants, to be held according to the Usage of the same Society, when and as often as they should think, might elect and admit such Member and Members of the same Society, into the Livery or Cloathing of the said Company, as they should think fit; and that the Person so elected, upon his Admission into the said Livery or Cloathing, should pay to the Master and Bailiffs, or, &c. the usual Sum of 20 *l.* for such his Admission thereto. And if any such Person so elected into the said Livery or Cloathing, as aforesaid, should not upon Notice accept thereof, having no reasonable Cause to refuse it, then he should pay to the said Master and Bailiffs, or, &c. for such his Refusal the Sum of 40 *l.* of lawful Money (of England) of this Kingdom. Which said Ordinance so made as aforesaid, afterwards, to wit, the 31st Day of May, in the Year of the Lord 1694, at London aforesaid, in the Parish and Ward aforesaid, at the Request of the said Master and Bailiffs, or Wardens, and Community of the said Mystery or Art of the Stationers of the City of London. And according to the Tenor of the Ordinance in that Case made and provided, was seen, read and examined, by the Right Honourable John Somers, Knt. then Lord Keeper of the Great Seal of England, John Holt, Knt. then Lord Chief Justice of the said Lord the King, assigned for Pleas to be held in the Court of the said Lord the King, before the King himself; and Geo. Treby, Knt. Lord Chief Justice

tice of the said Lord the King of the Bench, *By Laws.*  
at *Westminster*, and was by them then and there approved, established, and confirmed.

And they the said Master and Bailiffs, or Wardens, and Community of the Mystery or Art of Stationers of the City of *London*, do *The Defendant a Freeman.*

(farther) in Fact say, That the said *J.* (the Defendant) was after the making of the said Ordinance, and before the exhibiting of this Bill, *to wit*, on the first Day of *May*, 1695, and from thence continually afterwards, hitherto hath been, and still is, a Freeman and a Member of the said Society of the Master and Bailiffs, or *Ec.* *to wit*, at *London*, in the Parish and Ward aforesaid.

And that after the said first Day of *May*, in the Year last aforesaid, and before the exhibiting, *to wit*, at a Court of Assistants of them the said Master and Bailiffs, or, *Ec.* held according to the Usage of the said Society, at *Stationers-Hall* in the Parish and Ward aforesaid, on *Monday* the fifth Day of *August*, in the Year of the Lord 1695, by *John . . . . .* the then Master; *W. Rawlins* and *Sam. Lowndes*, the then Wardens, and *Roger Norton*, *Edward Brewster*, *Ec.* the then Assistants of the said Society, being then present and assembled, and being the major Part of the said Master, Warden, and Assistants of the said Society,

he the said *J. Hunt* being then and there a Freeman and a Member of the said Society, was by them the said Master, Wardens, and Assistants so assembled in a Court of Assistants, as aforesaid, then and there elected into the Livery of the said Society of the Master, and Bailiffs, or Wardens, *Ec.* And altho' he

*Was summoned to a Court of Assistants. Q. If not omitted.*

*And elected into the Livery.*

the

**By-Laws.** the said *J. H.* had afterwards, *to wit*, on the 5th Day of *October*, in the Year of the Lord last abovesaid, at *London* aforesaid, in the Parish and Ward aforesaid, had Notice as well of the said Order, as of the Election aforesaid, and was required by the said Master and Bailiffs, &c. to accept the said Livery; yet he the said *J.* did then and there wholly refuse to accept the same; and did not then accept, nor hath he at any Time since accepted of the said Livery, tho' he the said *J.* hath not given any reasonable Cause for (of) his Refusal of the said Livery, &c. Whereby an Action hath accrued to the said Master and Bailiffs, &c. to demand and have of the said *J. H.* the aforesaid 40 *l.* yet he the said *J. H.* tho' often required, had not yet paid the said 40 *l.* to the said Master and Bailiffs, or, &c. but hath hitherto denied, and still doth deny, to pay that to them, to the Damage of them the said Master and Bailiffs, or Wardens, and Community of the Mystery or Art of *Stationers* of the City of *London*, 50 *l.* and thereof they bring their Suit, &c.

*Which he refused to accept.*

**Unde Actio.**

*Note.*

*The foregoing Precedent may shew that the exactest Care is requisite to form a Declaration in Debt, upon a By-Law; for therein you are to set forth, not only the By-Law itself, and the Breach, in all their Circumstances; but also the original Charter or Letters Patents, shewing their Power of making such By-Laws.*

*I shall here add only one or two Declarations more in Debt on Publick Laws, which may be chiefly founded on such Statutes, for the Breach of*

of which there is a certain Penal Sum prescribed. *Statutes.*  
 The Forms of the Precedents in such Cases may  
 be easily extended in Number, beyond the Sta-  
 tutes themselves; but I am compelled to Brevity,  
 and consequently must omit . . . .

*A Declaration in Debt on the Stat. 21 H. 8.  
 of Non-Residence.*

Devonshire to wit. **R.** F. who prosecutes as *In B. R.*  
 well for the Lord the *On the Stat.*  
 King, as for himself, complains of *W. C.* in *21 H. 8.*  
 Custody, &c. (*vide ante*) of a Plea, that he *for Non-Resi-*  
 render to the said Lord the King, and to the *dence.*  
 same *R.* who prosecutes as aforesaid, 70 l. of *Lilly 151.*  
 lawful Money of *Gr. Brit.* which he owes to  
 the said Lord the K. and the said *R.* (who prose-  
 cuts as aforesaid) and unjustly detains; for  
 that, that he the said *W.* on the first Day of  
*April*, in the fourth Year of the Reign of the  
 said Lord the now King, and from thence  
 continually afterwards, for the Space of one  
 whole Year then next following, had been  
 and continued a spiritual and beneficed Per-  
 son, to wit, he the said *W.* during the whole  
 Time aforesaid, was and yet is Vicar of the  
 Vicarage of the Parochial Church of *M.* in  
 the County of *S.* and beneficed in the same  
 Church. And that he the said *W.* for se-  
 ven whole Months together concurrent in the  
 same Year, to be computed from the said  
 first Day of *May*, in the Year aforesaid, was  
 not personally resident or abiding, at or upon  
 his said Vicarage (\* *nor in, at, or upon any* \* *Q. The Act*  
*other his Benefices*) but he the said *W.* for and *as to those*  
 during the seven Months aforesaid, did whol- *Words.*  
 B b ly

Statutes.

ly and voluntarily altogether absent himself from his said Vicarage, and was not resident on his said Benefice (or any other his said Benefices) against the Form of the Statute in such Case made and provided. Whereby an Action hath (arisen) accrued to him the said R. (who prosecutes as aforesaid) to demand and have of the said W. 70 l. to wit, 10 l. for every Month so absented (*perpetrated*, or rather *incurred*) as aforesaid, against the Form of the said Statute. Yet he the said W. tho' often required, hath not yet paid the said 70 l. to the said Lord the King, and to the said R. who prosecutes as aforesaid, but hath hitherto altogether refused to pay the same to them; whereof the same R. who prosecutes as aforesaid, saith, that he is the worse, and hath Damage to the Value of 20 l. and thereof he brings his Suit, as well for the said Lord the King, as for himself. *Vide ante.*

*A Declaration in Debt on the Stat. 9 Ann.  
for preventing Gaming.*

In B. R.  
On the Stat.  
9 Ann. c.  
for preventing  
Gaming.  
Lilly 169.

Middlesex to wit. **W**. N. complains of T. B. in Custody of the Marshal, &c. of a Plea, That he render to him 16 l. which he owes to him, and unjustly detains; for that, to wit, That whereas he the said T. B. on the 26th Day of May, in the 11th Year of the Lady Anne, now Queen of Great-Britain, at Westminster, in the County aforesaid, was indebted to him the said W. N. in the said 16 l. for so much Money, by the said T. B. after the first Day of May, in the Year of the Lord 1711, had and received to the Use of the said W. whereby an  
Action

Action hath accrued to the same *W. N.* to demand and have of the said *T. B.* the said 16 *l.* according to the Form of the Statute made and provided in a Parliament of the said Lady the now Queen, held at *Westminster* in the said County of *Middlesex*, on the 25th Day of *November*, in the Year of the Lord 1710, entitled, *An Act for the better preventing of cessive and deceitful Gaming.* Yet he the said *T.* tho' often requested, hath not yet render'd the said 16 *l.* to the said *W.* but hath hitherto wholly refused, and still doth refuse, to render the same to him; whereof he the said *W.* saith, That he is the worse, and hath Damage, *ad Val. 20 l. &c.*

Note, *In this Case on the Issue Nil Debet, the Plaintiff had a Verdict, &c. and the Money was paid him.*

*The Statute against Usury pleaded to Debt on Bond.*

**A**fter praying Oyer of the Bond and Condition, say; Which being read and heard, he the said *M.* saith, That he ought not to be charged with the said Debt, by Virtue of the said Writing Obligatory, because he saith, that after the 29th Day of *December*, in the Year of the Lord 1713, to wit, on the said fifth Day of *June*, in the Year of the Lord 1728, at the Parish of *St. Martin in the Fields*, it was corruptly agreed between the said *E.* (the Obligee) and the said *M.* (the Obligor) and one *C. D.* That the aforesaid *E.* should lend and accommodate (advance) to the aforesaid *M.* 100 *l.* and should give Day for the Pay-

*The Stat. of Usury pleaded. Lilly 173.*

**Statutes.**

*This seems  
needless.*

ment thereof, until the fifth Day of *December* then next following; and that the aforesaid *M. and C. D.* for the Loan and Accommodation of the said 100 *l.* and for giving the said Day for the Repayment thereof for the Time aforesaid, should give and pay to the said *E.* the Sum of 5 *l.* 5 *s.* upon the said fifth Day of *December* then next following, for the Interest and Profit thereof, and for giving the said Day of Payment of the said 100 *l.* which said 5 *l.* 5 *s.* do exceed the Rate of 5 *l.* for the Interest of 100 *l.* for one whole Year, contrary to the Form of the Statute in such Case made and provided. And afterwards, *to wit*, on the said fifth Day of *July*, in the Year and Place in the Declaration above mention'd, he the said *E.* in Prosecution of the said corrupt Agreement, did lend and accommodate to the said *M. and C. D.* the said 100 *l.* and the said Writing Obligatory in the Declaration above mention'd, was then and there by them the said *M. and C. D.* sealed, and as their Deed delivered to the said *E.* And they the said *M. and C. D.* did then and there, *to wit*, on the said fifth Day of *July*, in the Year and Place in the said Declaration above mentioned, pay unto the said *E.* the aforesaid Sum of 5 *l.* 5 *s.* for the Profit and Interest of the said 100 *l.* and for giving Day for the Payment thereof upon the said fifth Day of *December* then next following, in Performance and Fulfilling (Pursuance) and according to the Form and Effect of the said corrupt Agreement, whereby the said Writing in the said Declaration above mentioned, by Force of the said Statute in that Case made

made and provided, is become void in Law. *Statutes.*  
 And this he is ready to aver; whereof he  
 prays Judgment if he ought to be charged  
 with the said Debt, by Virtue (Force) of the  
 said Statute.

And the foresaid *E.* saith, That for any *Replication,*  
 Thing by him the said *M.* above in pleading, *That it was a*  
 alledged, he the said *E.* ought not to be pre- *true and just*  
 cluded (barred) from having his said Action *Debt.*  
 against him the said *M.* because he saith,  
 That the said *M.* made, sealed, and as his  
 Deed delivered unto the said *E.* the said Wri-  
 ting Obligatory in the Declaration above  
 mentioned, for a true and just Debt, due to  
 the said *E.* by the said *M.* Without that, *And Traver-*  
 that it was corruptly agreed between him the *ses the corrupt*  
 said *E.* and the said *M.* and one *C. D.* in Man- *Agreement.*  
 ner and Form as the said *M.* hath in pleading  
 above alledged. And this he is ready to aver;  
 whereof he prays Judgment, and his said  
 Debt, together with his Damages (sustained)  
 by Occasion of the Detention of that Debt,  
 to be adjudged to him, &c.

And the said *M.* as before saith, That it *Rejoinder and*  
 was corruptly agreed between the said *E.* and *Issue, &c.*  
 the said *M.* and one *C. D.* in Manner and  
 Form as he the said *M.* hath in pleading  
 above alledged. And of this he puts himself  
 on the Country, and so doth the said *E.*  
 thereof likewise. Therefore let a Jury there-  
 of come, &c. (*i. e.* the Award of the *Venire*,  
*ut supra.*)

## Statutes.

*After the Issue is joined, and the Venire awarded, as before, you are to make up the Nisi Prius Record, in order to the Tryal of the Issue, which in Debt on Bond, &c. is made up in this Manner, viz.*

*Pleas before the Lord the King at Westminster, of Trinity Term, in the fifth Year of the Reign of the Lord George the Second, now King of Great-Britain, &c.*

In B. R.  
The Nisi Prius  
Record in  
Debt on Bond,  
&c.  
Lilly 185.

*Middlesex to wit.* **I**T is to be remember'd, That erewhile, *to wit*, in Easter Term last past, before the Lord the King, at *Westminster*, came *S. D.* Gentleman, by *J. L.* his Attorney, and then there brought into the Court of the said Lord the King, his certain Bill against *R. A.* Esq; otherwise named *R. A.* of the *Inner-Temple, London*, Esq; in Custody of the Marshal, &c. of a *Plea of Debt*; and there are Pledges of the Prosecution, *to wit*, *John Doe* and *Richard Roe*. Which said Bill follows in these Words, *to wit*, *Middlesex to wit*, *S. D.* Gentleman, complains of *R. A.* Esq; otherwise named *R. A.* of the *Inner-Temple, London*, Esq; in Custody of the Marshal of the *Marshalsea* of the Lord the King, being before the King himself, of a *Plea*, That he render to him 130*l.* of lawful Money of *Great-Britain*, which he owes to him, and unjustly detains; for that, *to wit*, That whereas the aforesaid *R.* on the 17th Day of *April*, in the Year of the Lord

1730,

1730, at *Westminster*, in the County aforesaid, by his certain Writing Obligatory, sealed with the Seal of the said *R.* and now here (then there) shewn to the Court of the said Lord the King, and dated the same Day and Year, acknowledged himself to be held and firmly bound to the said *S.* in the aforesaid 130 *l.* to be paid to the said *S.* when he should be afterwards thereto required; yet he the aforesaid *R.* tho' often (thereto) required, hath not yet paid the said 130 *l.* to the said *S.* but hath hitherto altogether denied (refused) and still doth refuse to pay it to him, to the Damage of him *S.* 20 *l.* and thereof he brings his Suit.

*To this the Defendant pleads Non est Factum (see before) and Issue thereon; all which, with the Award of the Venire, &c. are to be enter'd on the Nisi Prius Record.*

*And the Jurata, or award of the Habeas Corpora Juratorum thereupon is made up thus, viz.*

## Statutes.

*Pleas before the Lord the King at Westminster, of Trinity Term, in the fifth Year of the Reign of the Lord George the Second, now King of Great-Britain, &c.*

*Plea and Issue,  
Award of  
the Venire.  
And the Ju-  
rata there-  
upon.*

*Note.*

*Middlesex to wit.* **T**HE Jurors between *S. D. Gentleman*, by his Attorney, Plaintiff, and *R. A. Esq;* otherwise named *R. A. of the Inner-Temple, London, Esq;* Defendant, of a Plea of Debt, are put in Respite before the Lord the King, at *Westminster*, until *Tuesday* next after three Weeks of *Holy Trinity*, except the King's faithful and beloved *Robert Lord R. Chief Justice* of the said Lord the King, assigned for Pleas to be held before the King himself, shall before (*to wit*) on *Monday* next after the said three Weeks of *Holy Trinity*, be at *Westminster* in the Great Hall of Pleas there by the Form of the Statute, for Default of the Jurors (&c.) Therefore let the Sheriff have the Bodies of the Jurors, &c. the same Day is given to the aforesaid Parties to be there, &c.

*See the Form of a Postea ante.*

*The*

*The Form of a Bill filed in Debt on Bond  
against an Attorney of C. B. in Order to  
forejudge him, viz.*

*Middlesex to wit.* **F.** O. Widow, by **R. B.** In C. B.  
A Bill filed  
against an At-  
torney, in Or-  
der to fore-  
judge him.  
Lilly 184.  
See Clift's  
Entr. 241.  
**F.** her Attorney, com-  
plains of **B. T.** an Attorney of the Court of  
the Lord the King of the Bench here, at  
*Westminster*; otherwise named **B. T.** of the  
City of **L.** Gentleman, being present here in  
Court in his proper Person; of that, That  
he hath not render'd to the said **F.** 100 *l.*  
which he owes to her, and unjustly detains;  
for that, *to wit*, That whereas he the said **B.**  
on the 15th Day of *July*, in the fifth Year of  
the Reign of the Lord *George* the Second,  
now King of *Great-Britain*, at *Westminster*, in  
the said County of *Middlesex*, by his certain  
Writing Obligatory, had acknowledged him-  
self to be held and firmly bound to the said  
**F.** in the said 100 *l.* to be paid to the said **F.**  
when he should be thereto required. Yet he  
the aforesaid **B.** tho' oftentimes thereto re-  
quested, had not yet paid the said 100 *l.* to  
the said **F.** but hath hitherto denied (refused)  
and still doth deny to pay the same to her;  
whereof the said **F.** saith, That she is the  
worser, and hath Damage to the Value of 20 *l.*  
and thereof she prays Remedy, &c. and she  
brings here into Court the said Writing, which  
attests the Debt in the Form aforesaid, and  
which is dated the Day and Year abovesaid,  
&c.

*Upon*

**Prisoners.**

*Upon Filing of which Bill, there is made the following Rule, viz.*

*The Rule thereon.*

Except the Defendant shall appear on *Saturday* next after the *Morrow* of the *Lord's Ascension*, let him be forejudged the Court,

By the Court, *Cooke.*

*Here may be added the several Pleas in Bar to Actions of Debt, besides those already shewn, but as a due Prosecution of this Head, would enlarge this Treatise beyond its due Bounds, I am obliged to postpone the Consideration thereof to some other Opportunity; and shall conclude this Title Debt with the following Plea, viz.*

*A Plea in Bar on the Act for Discharge of poor Prisoners.*

*The Act for Discharge of poor Prisoners pleaded in Bar in Debt. See Clift's Entr. 156.*

**A**ND the aforesaid *J. W.* by *T. F.* his Attorney, comes and defends the Force and Injury, when, where, &c. and saith, That he cannot deny the Action of the aforesaid *W. T.* nor but that he owes to the said *W. T.* the aforesaid 50 *l.* in the Form (Manner) as the said *W. T.* hath above declared against him. But he the said *J. W.* further saith, That the said *W. T.* ought not to have Execution of the said Debt, or of any Damages occasion'd by the Detention of that Debt, to be adjudged to him either upon the Person of him *J.* or of his Wearing Apparel, or Household Furniture, not exceeding the Sum of 10 *l.* in Value, or of the necessary Tools of his

his Trade and Occupation; because he the said *J. W.* saith, That *on such a Day and Year* he was a Prisoner in the Prison called the *King's Bench* Prison, in the County of *Surrey*, (under the Custody of *A. B.* Esq; the then Marshal of the *Marshalsea* of the Lord the now King, being before the King himself, being then the Keeper of the said Prison) and was then there detained in the said common Prison (Gaol) at the Suit of several Persons his Creditors, for divers Debts due to them by him the said *J. W.* And that he the same *J. W.* being poor, and altogether unable to pay to his said Creditors, their Debts due to them by the said *J. W.* did afterwards, *to wit*, on or about *such a Day*, in *such a Year*, at *such a Place*, petition, &c. to be relieved in that Particular, according to the Form of (*divers Statutes*) the late Statute made and enacted for Relief and Discharge of poor Prisoners, &c. and thereof (of the said Petition) did then and there give Notice to the said *W. T.* (to whom he owed the said 50 *l.* as aforesaid) in due Manner, according to the Form of the same Statutes; and thereupon, afterwards, *to wit*, *such a Day, Year, and Place*, he the said *J. W.* was in a due Manner, and according to the Form of the said Statutes released and discharged from the said Prison, the said *W. T.* no way contradicting it. And this he is ready to aver; whereof he prays Judgment, if the said *W. T.* ought to have Execution of the Debt and Damages aforesaid, either upon the Person of him *J.* or of his Apparel or Household Goods, or the necessary Tools of his Trade.

And

Prisoners.

Replication.

And Judgment.

And because the said *W. T.* doth not deny the said Matters so alledged by the said *J. W.* in the Form aforesaid, but admits the same to be true; he demands Judgment *thereof*, and his said Debt, together with his Damages, by Occasion of the Detention of that Debt; to be adjudged to him to be executed and levied upon the Lands, Tenements, Goods and Chattels of him *J. W.* (his wearing Apparel and Furniture of his House, not exceeding 10 *l.* in Value, and the necessary Tools of his Trade only excepted) but not upon the Person of the said *J. W.* according to the Form the Statutes aforesaid; therefore it is considered, That the said *W. P.* shall recover against the said *J. W.* his said Debt, and his Damages by Occasion of the Detention of that Debt to 50 *s.* by the Court here adjudged to the said *W. T.* by his own Assent, to be executed and levied upon the Lands, Tenements, Goods and Chattels of the said *J. W.* (his wearing Apparel and Household Furniture, not exceeding 10 *l.* in Value, and the necessary Tools of his Trade only excepted) but not upon the Person of the said *J. W.* according to the Form of the Statutes aforesaid, and the said *J. W.* in Mercy, &c.

See Clift's Entr. 156, 157. The Stat. of two thirds of the Creditors compounding, &c. pleaded. And Lilly 108. The Stat. 10 Annæ c. — pleaded in Discharge of a Defendant from Execution, with a Replication, That the Defendant did not remain a true Prisoner, and a Traverse of his Discharge; to which the Defendant rejoyns with a Protestando, and takes Issue on the Traverse.

Note 3.

*Note ; The several Titles of Detinue and Dower, are here omitted, the former as being now almost ex usu, its End being better effected by an Action on the Case ; and the latter, because 'tis an Action meerly Real ; which kind of Actions, &c. are not intended to be treated of in this Collection, which is confined to personal and mixed Actions.*

DECLA-

# DECLARATIONS

*and Pleadings in Ejectment.*

*The Form of a Precipe or first Process in Ejectment, commonly called an Original, is thus :*

*First Process  
in Ejectment.*

Middlesex to wit. **G**EORGE the second by the Grace of God, King of Great Britain, &c. to the Sheriff of Middlesex, greeting, If *A. B.* shall make thee secure for prosecuting his Clamour (Claim) then put *C. D.* late of *J.* in thy County, Gent. by Gage and good Pledges, That he be before us, wheresoever we shall be in *England*, at such a Return Day, to shew why with Force and Arms he hath entred (into) three Messuages, &c. with the Appurtenances in *J.* aforesaid, which *W. G.* demised to the same *A.* for a Term, which is not yet past; and hath ejected him from his said Farm, and hath done to him other Wrongs, to the great Damage of him *A.* and against our Peace, as 'tis said, and have thou then there this Writ, Witness, &c.

*But*

# IN EJECTMENT.

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*Process.*

*But the most usual first Process in Ejectment in B. R. is a Capias in Middlesex (or a Latitat in any other County) in this or the like Form, viz.*

**G**EORGE, &c. to the Sheriff of M. A Capias or Latitat. in Ejectment in B. R.  
greeting, We Command thee, That thou take C. D. of J. in thy County, Gent. if he may be found in thy Bailiwick, and keep him safely, so that thou have his Body before us at Westminster on such a Return Day, to answer to A. B. of a Plea, why with Force and Arms he hath entred into three Messuages, fifty Acres of Land, &c. in J. in thy County, which J. C. demised to him for a Term of Years, which is not yet past, and hath ejected him from his said Farm, and done to him other Wrongs, &c.

*And the Form of a Declaration thereon is thus :*

Middlesex to wit. **A.** B. late of J. in the said In B. R. A Declaration in Ejectment. See Inst. Leg. 138.  
County, Gent. complains of C. D. in Custody of the Marshal of the Marshalsea, of the Lord the now King, before the King himself; for that, to wit, That whereas E. F. Esq; on such a Day, in such a Year of the King's Reign, had at J. in the County aforesaid, demised, granted, and to Farm letten to the foresaid A. three Messuages, &c. with the Appurtenances, situate and being in the said Parish of J. in the County aforesaid; to have and to hold the (Messuages, Lands,) Tenements aforesaid,

**Procesſes.**

ſaid, with the Appurtenances, to the foreſaid *A.* and his Aſſigns from (*ſuch a Day*) then laſt paſt, to the full End and Term of five Years from thence next enſuing, and fully to be compleat and ended; by Virtue of which ſaid Demiſe he the ſame *A.* entered in- to the Tenements aforeſaid, with the Appurtenances, and was thereof poſſeſſed until the foreſaid *C.* afterwards, *to wit*, on the ſame Day of    in the fifth Year aforeſaid, with Force and Arms entered the Tenements aforeſaid, with the Appurtenances in and upon the Poſſeſſion thereof of him *A.* (or upon the ſaid *A.*'s Poſſeſſion thereof) and ejected and amoved him the ſaid *A.* from his Farm aforeſaid, his ſaid Term therein, being not yet ended; and hath held, and yet doth hold him out of the Poſſeſſion thereof, and then and there did other Wrongs to him, againſt the Peace of the ſaid Lord the now King, whereof he the ſaid *A.* ſaith, That he is the worſe, and hath Damage to the Value of 10 l. and thereof he brings his Suit.

*See the Form of the Rule by Aſſent uſually made hereupon, hereafter.*

*A De-*

# IN EJECTMENT of

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Land, &c.

*A Declaration in Ejectment for a Messuage, Cottage, Land, &c. with the Moiety of a Manor, and of a Fair, Market, &c.*

Leicester-shire to Mr. **W**. F. late of G. in  
 the County a-  
 foresaid, Yeoman, was attached to answer to  
 G. S. of a Plea, why with Force and Arms  
 he entred into five Messuages, twenty Cot-  
 tages, forty Acres of Land, 200 Acres of Mea-  
 dow, and 400 Acres of Pasture, with the Ap-  
 purtenances, in *W. S.* and *H.* and a Moiety of  
 the Manor of *H.* with the Appurtenances;  
 and also a Moiety of the Fairs and Markets of  
*H.* aforesaid, and a Moiety of all the Tolls of  
 Stallage, Piccage, Pontage, and of other Per-  
 quisites and customary Profits and Privileges  
 to the same Manor, Fairs and Markets belong-  
 ing and appertaining, which *J. D.* leased to  
 the said *G.* for a Term of Years not yet  
 expired, and ejected him the said *G.* from  
 his said Farm, and did to him other Enor-  
 mities (Wrongs) to his great Damage, and  
 against the Peace of the Lord the now King,  
 and whereof the same *G.* by *W. P.* his At-  
 torney, complains, That whereas the fore-  
 said *J.* on the 10th Day of *October*, in the  
 5th Year of the Reign of the said Lord the  
 now King, at *W.* in the County aforesaid,  
 had leased to the said *G.* the Tenements, Pre-  
 mises and Moiety aforesaid, with the Ap-  
 purtenances to be held and occupied by the  
 said *G.* and his Assigns from the 29th Day of  
*September* then last past to the End and Term  
 of seven Years from thence next following,

In B. C.  
 Ejectment for  
 a Messuage,  
 Cottage, &c.  
 and a Moiety  
 of a Manor,  
 &c.

Lilly 192:

Cc

and

*Lands, &c.* and fully to be compleat and ended; by Virtue of which said Demise he the said *G.* entred into the Tenements, Premisses and Moieties aforesaid, with the Appurtenances, and was thereof possessed; and he the said *G.* being so thereof possessed, he the said *W. F.* afterwards, *to wit*, on the 10th Day of *October*, in the said 5th Year of the Reign of the said Lord the now King entred with Force and Arms into the Tenements, Premisses and Moieties aforesaid, with the Appurtenances, which the foresaid *J.* had demised to the said *G.* in the Form aforesaid; for the said Term not yet expired; and ejected him from his foresaid Farm, and did to him other Wrongs, to the great Damage of him *G.* and against the Peace, &c. whereof he saith, That he is the worse, and hath Damage to the Value of 40*l.* and thereof, &c.

*A Declaration in Ejectment for the Mesne Profits of Lands, &c.*

*In C. B.  
Ejectment for  
the Mesne  
Profits, &c.  
Lilly 192,  
193.*

*Worcestershire to wit. J. D.* late of *W.* in the County of *Gloucester*, Yeoman, was attached to answer to *J. U.* of a Plea, why, with Force and Arms, three Messuages, 500 Acres of Land, 200 Acres of Meadow, and 200 Acres of Pasture, with the Appurtenances in *T.* in the said County of *W.* he broke and entred, and expelled, and removed him *J. U.* from the Possession and Occupation of the same Tenements; and for a long Time, *to wit*, from such a Day, &c. to such a Day, &c. held and kept the said *J. U.* from the Possession and Occupation of the

the same Tenements, from whence he had Profits, &c.  
 been so expelled and amoved; and also for and  
 during the said whole Time took and had  
 (received) all the Issues and Profits of the  
 same Tenements, being of the yearly Value  
 of 200*l.* to the proper Use of him *J. D.* and  
 also did to him other Wrongs, to the great  
 Damage of him *J. U.* and against the Peace  
 of the Lord the now King; and whereof he  
 the same *J. U.* by *J. S.* his Attorney, com-  
 plains, That the foresaid *J. D.* on the first  
 Day of *July*, in the 5th Year of the Reign  
 of the Lord the now King, broke and en-  
 tered with Force and Arms into the said  
 three Messuages, 500 Acres of Land, &c.  
 with the Appurtenances in *T.* in the said  
 County of *W.* and expelled and amoved him  
*J. U.* from the Possession and Occupation of  
 those Tenements; and for a long Time, to  
 wit, from *such a Day, &c.* to *such a Day, &c.*  
 (or to the Day of issuing of the Original Writ  
 in this Case) as aforesaid, held and kept the  
 said *J. U.* from the Possession and Occupation  
 of the same Tenements, from whence he had  
 been so expelled and amoved, and also took  
 and held (received) the Issues and Profits of  
 the same Tenements, being of the yearly  
 Value of, &c. for and during that whole Time,  
 to the proper Use of him *J. D.* and did to  
 him *J. U.* other Wrongs; to the great Da-  
 mage of him *J. U.* and against the Peace, &c.  
 from whence he saith, that he is the worse,  
 and hath Damage to the Value of 40*l.* and  
 thereof he brings his Suit.

**Plea in Abatement.**

*Plea in Abatement:  
No such Writ  
in the Register  
Oyer and Recital of the  
Writ.*

*Variance.*

*Note; This  
Plea seems  
only for de-  
lay.*

And the foresaid *J. D.* by *J. L.* his Attorney comes and defends the Force and Injury when, where; &c. and prays Oyer of the said Writ, and it is read to him in these Words, *to wit*, George the second by the Grace of God K. of, &c. To the Sheriff of the County of *Worcester*, Greeting, if *J. U.* shall make thee secure (*i. e.* indemnify thee) for prosecuting of his Clamor (Claim) Then put by Gage and safe Pledges, *J. D.* late of *W.* in the County of *G.* Yeoman, That he be before us from the Day of *Easter* in one Month wheresoever we shall then be in *England*, to shew why, he broke and entered with Force and Arms into three Messuages, &c. in *T.* in thy County, and for a great while (long-tune) kept and held the said *J. D.* out of the Possession and Occupation of the same Tenements, and also took and had (received) all the Issues and Profits of the same Tenements, being of the yearly Value of 200 *l.* to the proper Use of the said *J. D.* and did to him other Wrongs to the great Damage of him *J. U.* and against our Peace, and have (thou) there the Names of the Pledges and this Writ. Witness my self at *Westminster* the 12th Day of *April*, in the 5th Year of our Reign. Which being read and heard, he the said *J. D.* prays Judgment of the said Writ, because he saith, That there is not any such Form of a Writ of Trespass in the Register of Writs, as the Form of the foresaid Writ, and that the said Writ varies from the said Register of Writs in this; That it does not appear by that Writ, That the Messuages and Lands therein mentioned, were the Messuages and Lands of the said *J. U.* and this he is ready to aver; whereof

whereof he prays Judgment of the said Writ, and that the said Writ may be quashed, &c. But the said Plea in Abatement being over-ruled, The Defendant afterwards pleaded the common Plea of Not guilty to the Force, and to the Residue that the Plaintiff had not named the Closes, &c.

And the foresaid J. D. by J. L. his Attorney comes and defends the Force and Injury, when, where, &c. and as to the coming (entring with Force and Arms, and whatsoever is against the Peace, &c.) he the said J. D. saith, That he is Not guilty thereof; and of this he puts himself upon the Country, and the said J. U. doth thereof likewise, and as to the Residue of the said Trespas above supposed to be done, he the said J. D. saith, That the said J. U. ought not to have (or maintain) his said Action thereof to be maintained against him, because he saith, That the Messuages aforesaid, and also the Places aforesaid, wherein the Trespas aforesaid is above supposed to be done, are, and at the Time wherein the said Trespas is supposed to be done were, one Messuage, called *White-House*, one other Messuage called *Black-House*, and another Messuage called *Red-House*, and 500 Acres of Lands, called *Blacklands*, &c. with the Appurtenances in T. aforesaid, in the County aforesaid, which said Tenements, with their Appurtenances are, and at the Time of the said supposed Trespas were, and also for and during the whole Time in the foresaid Declaration above-mentioned, have been the proper Soil (Land) and Freehold of him the said J. D. whereby he the

Plea in Bar,  
Not guilty, &c.  
Lilly 193.

*Lands, &c.* said *J. D.* at the foresaid Time wherein the said Trespass is supposed, and also for and during the whole Time in the foresaid Declaration mentioned, he the said *J. D.* hath broken, entred into, had, held, used and occupied the said several Messuages, Closes, Lands, &c. in the said Declaration mentioned, and taken, had and received the Rents, Issues and Profits of the same to his own proper Use and Benefit as he well and lawfully might, and this he the said *J. D.* is ready to aver, whereof he prays Judgment, if the said *J. U.* ought to have or maintain his said Action thereof against him, &c.

*E. Norby,*

*An Entry of Nil dicit in Ejectment, (i. e. where the Defendant lets Judgment go by Default) and Judgment thereon for the Plaintiff to recover the Term and Damages.*

*Nil dicit in  
Ejectment, and  
Judgment  
thereon.  
Lilly 194.*

**A**ND the foresaid *J.* by *B. H.* his Attorney comes and defends the Force and Injury, when, where, &c. and saith nothing in Bar or Preclusion of the foresaid Action of the said *L.* but makes Default, whereby he the said *L.* remains against the said *J.* thereof altogether undefended; therefore it is considered, That the said *L.* shall recover against the foresaid *J.* his said Term yet to come of, and in the Messuages, Lands, &c. aforesaid, with their Appurtenances; and it is also considered, That the foresaid *L.* ought to recover his Damages by Occasion of the Premises against him

him the said J. and thereupon he the said L. doth freely here in Court Remit to the said J. all and all Manner of Damages, Charges and Coſts, which he the said L. hath ſuſtained by Occaſion of the Premiſſes, or which in this Particular may be adjudged to him and all and all Manner of Judgments and Executions to be had of or for the ſame. *Therefore let the ſaid J. be acquitted of the ſaid Damages, Charges and Coſts:* Whereupon it is command to the Sheriff, That he Cauſe the ſaid L. to have his Poſſeſſion of his ſaid Term yet to come, of and in the ſaid Meſſuages, Lands, &c. aforeſaid, with their Appurtenances, without delay, and how that Precept he ſhall have executed, let him make certainly known to the Lord the now King, from the Day of *Eaſter* in 15 Days, whereſoever he ſhall then be in *England*; the ſame Day is given to the ſaid L. &c.

Lands, &c.  
Remittit  
Damna, &c.

*Or the ſame (if it be without a Remittit Damna) may be entred thus :*

AND the foreſaid J. by B. H. his Attorney comes and defends &c. *as above to*) yet to come, of and in the Meſſuages and Lands, and Tenements aforeſaid, with their Appurtenances; and alſo that he ought to recover his Damages by Occaſion of the Premiſſes againſt the ſaid J. whereupon it is commanded to the Sheriff, That he cauſe the ſaid L. to have his Poſſeſſion (&c. *as above.*)

Another Form  
without a Remittit  
Damna.

Lands, &amp;c.

## A Declaration in Ejectment on a double Demise.

Ejectment on  
a double De-  
mise.

Lilly 204.

2 Salk. 774.

Demise by  
a Trust.2d Demise by  
Cestui que  
Trust.

**Kent to wit.** **L.** late of London, Gent. was attached to answer to **T. H.** Gent. of a Plea, why with Force and Arms he entred into 10 Messuages, 10 Gardens, six Orchards, 150 Acres of Land, 40 Acres of Meadow, and 80 Acres of Pasture, with the Appurtenances in *East-Church, Queenborough,* and *W.* in the Isle of *Scapei* (which *C. H.* and *S. G.* Baronets leased to the said *T. H.* for a Term which is not yet past) and ejected him the said *T.* from his said Farm, and did to him other Wrongs; to the great Damage of him *T.* and against the Peace of the Lord the now King, &c. and whereof the same *T.* by *J. A.* his Attorney, complains, That whereas they the said *C. H.* and *S. G.* Baronets, on the 4th Day of *July*, in such a Year of the now King at *East-Church* aforesaid, had demised to the said *T.* the Tenements aforesaid, with their Appurtenances as before mentioned, to have and occupy the Tenements aforesaid, with their said Appurtenances unto the said *T.* and his Assigns from the third Day of *July* then last past to the End and Term of seven Years from thence next ensuing, and fully to be compleat and ended. And also whereas *J. E.* of, &c. in the County aforesaid, Esq; afterwards, to wit, on the said 6th Day of *July*, in the said 5th Year of the said Lord the now King, at *East-Church* aforesaid, had demised to the said *T.* the Tenements and Premises aforesaid,

said, with their Appurtenances last mention-  
 ed) to have and occupy the said Tenements  
 and Premises with their Appurtenances last  
 mentioned to the said T. and his Assigns from  
 the said 4th Day of July then last past, to  
 the full End and Term of seven Years from  
 thence next following, and fully to be com-  
 plet and ended; by Virtue of which said  
 several Demises he the foresaid T. entred in-  
 to the said several Tenements, with their  
 Appurtenances, and was thereof possessed;  
 and he the said T. being thereof so posses-  
 sed, the foresaid L. afterwards, *to wit*, on the  
 7th Day of the same Month of July, in the  
 5th Year aforesaid, entred with Force and  
 Arms into the Tenements aforesaid, with  
 the Appurtenances, which the said C. H. and  
 S. G. and the said J. E. had demised to the  
 said T. in the Form aforesaid, for a Term  
 not yet past; and ejected him the said T. H. from  
 his said Farm, and did to him other Wrongs;  
 to the great Damage of him T. (*Ec. as before.*)

Lands, &amp;c.

A De-

*Original.*

*A Declaration in Ejectment by Original, to be delivered to the Tenant, to compel him to appear, &c.*

*A Declaration to be delivered to the Tenant, to compel him to appear, &c.*  
Lilly 203.

*Middlesex to wit.* **L.** late of London, Gent. was attached to answer to **T. L.** Gent. of a Plea, Why he enter'd with Force and Arms into three Messuages, 30 Acres of Land, &c. with the Appurtenances in *H.* which *V. B.* Spinster, demised to the said *T.* for a Term not yet past, and ejected him from his said Farm, and did to him other Wrongs, to the great Damage of him *T.* and against the Peace of the Lord the now King, &c. and whereof the same *T. L.* by *W. B.* his Attorney, complains, That whereas she the said *V. B.* on the 20th Day of *November*, in the fifth Year of the Reign of the Lord *George* the Second, now King of *Great-Britain*, &c. at *H.* aforesaid, had demised to the said *T.* the Tenements aforesaid, with the Appurtenances, to have and occupy the said Tenements, with their Appurtenances, to the said *T.* and his Assigns, from the 17th Day of the same Month of *November* then last past, unto the End and Term of five Years from thence next following, and fully to be compleat and ended. By Virtue of which said Demise, he the said *T.* enter'd into the Tenements aforesaid, with their Appurtenances, and was thereof possessed. And the said *T.* being so thereof possessed, the aforesaid *L.* afterwards, *to wit*, on the same 20th Day of *November*, in the fifth Year aforesaid, enter'd with Force and Arms into the said Tenements, with the

## IN EJECTMENT by

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Appurtenances aforesaid; and ejected him (the said) T. from his Farm aforesaid, and did him other Wrongs, to the great Damage of him T. and against the Peace, &c. whereof he saith, That he is the worse, and hath Damage to the Value of 40 l. and thereof he brings his Suit,

Original.

Note.

*The above Declaration is to be delivered to the Tenant with the following Notice.*

*To Sir A. B. Knight,*

*S I R,*

**I** AM informed that you are in Possession, or claim Title to the Premises in this Declaration of Ejectment mentioned, or to some Part thereof: And I being sued in this Action as a casual Ejector; and having no Claim or Title to the same Premises, do advise you to appear the first Day of next *Hillary* Term, in his Majesty's Court of King's Bench (or Common Pleas) at *W.* by some Attorney of that Court, and then and thereby a Rule of the same Court, to cause yourself to be made Defendant in my Stead; otherwise I shall suffer a Judgment to be enter'd against me, and you will be turned out of Possession. I am

Notice.

Your humble Servant;

*L. L.*

*The*

Notice.

*The Affidavit of the Delivery of the Declaration and Notice to such Tenant, as above.*

**Y** T. Clerk to J. L. Gentleman, one of the Attorneys of this Court, maketh Oath, That he did upon *Saturday* the 17<sup>th</sup> of this Instant *January*, deliver a Copy of the Declaration hereunto annexed unto *M. F.* then Tenant, in Possession of Part of the Premises in the said Declaration mentioned; and did also on the same Day deliver one other Copy of the said Declaration unto *M.* the Wife of *D. G.* one other Tenant in Possession of other Part of the Premises in the said Declaration mentioned; and also on the same Day did deliver one other Copy of the said Declaration unto *D.* the Wife of *Mr. A.* one other Tenant in Possession of other Part of the Premises in the said Declaration mentioned. And that he did upon *Monday* the 18<sup>th</sup> Day of *January* last deliver one other Copy of the said Declaration unto *Mrs. H.* one other Tenant in Possession of other Part of the Premises in the said Declaration mention'd (Note, no Delivery of such Declaration to any Servant of a Tenant in Possession is good, unless it appear that it afterwards came to the Tenant's own Hands or special Knowledge) And this Deponent further saith, That he told them all severally, that it was a Declaration in Ejectment; and that unless they did appear by some Attorney in the Court of *King's-Bench*, this present *Hilary* Term, there would be Judgment thereupon against the Defendant by Default, and they

they would be turned out of Possession, or Entry, &c.

*The Form in B. R. of a Rule by Consent in Ejectment, i. e. That the Tenant (or Landlord) be made Defendant, and to confess Lease, Entry, and Ouster.*

Michaelmas, the sixth Year of King George the Second.

Went to wit. **I**T is ordered by the Assent of Rule for the (the Attorneys of both) Par- Tenant to be ties, That J. S. be made Defendant, instead made Defen- of the now Defendant C. D. and that he ap- dant, and to pears without Delay at the Suit of the now confess a Lease, Entry, &c. Plaintiff (and put in common Bail) and receive a Declaration in a Plea of Trespass and Ejectment for the Tenements in Question, and plead not guilty thereto without Delay, and upon the Tryal of the Issue, shall confess Lease, Entry, and actual Ejection (Expulsion) and insist only upon the Title, otherwise Judgment to be enter'd against the now Defendant C. D. by Default. And if, upon the Tryal of the said Issue the said J. S. shall not confess Lease, Entry, and actual Ejection, whereby the Plaintiff shall not be able further to prosecute his Bill (Writ if by Original) against the aforesaid J. then no Costs or Charges shall be adjudged on such Non Pro. But the aforesaid J. shall pay to the said now Plaintiff the Costs and Charges to be taxed thereupon. And it is further ordered, That if upon the Tryal of the aforesaid

**Entry, &c.** said Issue, a Verdict shall be given for the Defendant J. S. or if it happens that the aforesaid Plaintiff shall no further prosecute his said Bill (Writ) for any other Cause, than for not confessing the Lease, Entry, and actual Ejection aforesaid; then the Plaintiff shall pay to the aforesaid J. the Costs and Charges to be taxed in that Behalf.

*Fr. Page.*

**H. D.** Attorney for the Plaintiff.

**T. B.** Attorney for the Defendant.

**For Costs 12 l.**

*Note, Write in the Margin of the above Rule the Parties Names, the Parcels and Quantities of the Lands, with the Places and Country where they lye, and by whom leased.*

*The like Rule in C. B.*

**Devonshire to wit.** **I**T is ordered by the Court, by the Assent of J. R. the Plaintiff's Attorney, and D. M. the Attorney for C. G. who claims the Title of the Tenements in Question, that he the said C. G. shall be admitted Defendant. And that the same C. shall appear without Delay by his said Attorney, who is to receive a Declaration, and thereto plead the general Issue this Term; and at the Tryal to be thereupon had, he the said C. shall appear in his proper Person, or by his Council or Attorney, and confess Lease, Entry, and actual Ouster (Expulsion) of so many of the Tenements in the Plain-

## IN EJECTMENT.

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Plaintiff's Declaration specified, as are in the Entry, &c. Possession of the said Defendant or his Tenants, or of any Person claiming by or under the said Defendant's Title, or that in Default thereof Judgment may be enter'd against the Defendant T. G. the casual Ejector, but that the Proceedings be stay'd against him until Default be made in any of the Premises. *And it is further ordered by the like Assent, That if by Occasion of such Default the Plaintiff shall become Nonsuit upon the Trial, the said C. shall take no Advantage thereof, but shall pay to the said Plaintiff the Costs to be taxed by the Prothonotary. And it is further ordered, That the Plaintiff's Lessor shall be chargeable with the Payment of the Cost to the aforesaid C. which by the Court shall be allowed or adjudged to him (in any Manner.)*

In C. B.  
Rule for  
Judgment  
Nil, &c.

Sign'd by both the Attorneys *ut supra*.

*And Note; If on such a Rule the Tenant does not appear, and none hath moved the Court to be made Defendant in his Stead, the Rule (i. e. the Time order'd by the Court) to appear, &c. being expired, Judgment may be sign'd against the casual Ejector, which is usually done with a Release of Damages, or without mentioning any Damages; whereupon you may sue out your Writ, To have Possession, &c.*

In B. R.  
Rule for the  
Master to com-  
pote the Rent  
thwart, and  
to tax the  
Lessor's Costs  
&c.

**A Rule**

Judgment

*A Rule on Motion for Judgment in Ejectment Nisi, &c. is thus.*

*In C. B.  
Rule for  
Judgment,  
Nisi, &c.*

**E**Xcept the Tenant in Possession shall appear and plead to Issue within a Week next after the Close of this Term, let Judgment be entered for the Plaintiff against C. D. the now Defendant.—on the Motion of Mr. Serjeant Carthew.

*By the Court.*

*A Rule by the Statute 5 Anne, for Amendment of the Law, to refer to the Master to compute the Rent in Arrear, and to tax the Lessor's Costs.*

*In B. R.  
Rule for the  
Master to compute the Rent  
Arrear, and  
to tax the  
Lessor's Costs;  
&c.*

**I**T is ordered, That the Defendant shall bring here into Court 8s 7. and thereupon it is referred to Mr. Clark to compute the Money being in Arrear to the Lessor of the Plaintiff, issuing out of the Premises in Question; and also to tax the Costs of the said Lessor expended in this Cause; and if the said Lessor shall accept of the Money so computed and taxed by Mr. Clark in full Discharge of this Suit; then the said 8s 7. to be paid to the said Lessor or his Attorney out of the Court. And if he shall not accept thereof, and it shall appear on the Tryal of the Issue, that the said Lessor hath no Title to the Premises in Question, but only for the not paying of the Money so being in Arrear,

# IN EJECTMENT on

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rear, then a Verdict shall be given for the Defendant—on the Motion of Mr. Lacy.

A Lease.

By the Court.

But Note, If the Tenements you would recover are not inhabited, or there be no Tenant in Possession of the Premises, you are to execute an Ejectment Lease thereon, in the following Form.

**T**His Indenture made, &c. between *J. A.* of *L.* in the County of *M.* Tanner, of the one Part, and *W. R.* of, &c. Gentleman, of the other Part, witnesseth, That he the said *J. A.* for divers good Causes and Considerations him thereunto moving, hath demised, granted, and to farm letten, and doth by these Presents demise, grant, and to farm lett unto the said *W. R.* i. e. (the Attorney) all that his Farm or Messuage, &c. commonly called or known by the Name of, &c. situate, lying, and being in the Parish of, &c. in the said County of *M.* and late in the Possession or Occupation of one *H. D.* to have and to hold the Premises aforesaid, with the Appurtenances, from the Date of these Presents unto the full End and Term of three, four, five, &c. Years, from thence next ensuing, and fully to be compleat and ended; provided always and upon Condition, that if the said *J. A.* his Executors or Administrators, shall at any Time after the 30th Day of this present *May*, tender to the said *W. R.* his Executors or Administrators, one Shilling of lawful Money of *Great-Britain*, then this present Indenture, and every Thing herein

A Lease in Ejectment where there is no Tenant in Possession, &c

D d

con-

Leases.

contained, shall be void and of none Effect (any Thing herein contained to the contrary in any wise notwithstanding) *In Witness* whereof the Parties aforesaid have hereto interchangeably set their Hands and Seals the Day and Year first above written.

*On Execution of which Lease you may deliver your Declaration in Ejectment, as before is shewn.*

I confess a nameless Author has lately published, That in Ejectment there is no Occasion of Sealing any Lease of the Premises, where there is no Tenant in Possession: And if there be no Tenant in Possession, the Declaration is to be fixed on the Door of the Messuage, or the most notorious Place of the Land, and that this shall be deemed good Service by Virtue of the Statute of 4 Geo. 2. For the more effectual preventing of Frauds committed by Tenants, and for the more easy Recovery of Rents, &c.

That the Stat. 4 G. 2. does not provide against sealing of Ejectment Leases, where there is no Tenant in Possession.

But that Author in this Particular (as in some others) seems to have fallen under an egregious Error, by not duly considering either the Subject Matter, of which he treats; or the Words or Intent of the Act of Parliament, to which he refers; I shall therefore here beg leave (in order to prevent unguarded Readers from being led into Mistakes) a little to explain the Nature of Ejectment Leases, and the Words and Intent of the late Act; and consequently shew, That that Act has no Way alter'd the Practice of sealing Ejectment Leases on the Premises, where there is no Tenant

Tenant in Possession. Nay, the very Words of the Clause urg'd by our nameless Tutor, in Defence of his Doctrine, are so far from affecting such Cases where there is no Tenant in Possession, that they are an express Provision in Cases where there is a Tenant in Possession. See the Stat. Sect. 2. *infra*.

Now the Nature of an Ejectment is such, That *ex vi Terminum* it supposes a being put out of Possession. And as the Party ejected brings this Action in order to recover again the Possession of the House, Land, &c. from the Ejector; so he must in his Declaration always alledge, that he had the Possession thereof when the Defendant ejected him; so that there must of Necessity be an *Ejector* and an *Ejectee*.

1. The Nature of an Ejectment.

And therefore the Method formerly was in all Cases of Ejectment (even where there was a Tenant in Possession) for the Plaintiff, or he who claim'd a Title to Houses, Lands, &c. to make an actual Lease of the Premises to some Nominee, who entring with the Lease on the Premises, and giving Notice of such Lease to the Tenant, was thereby said in Law to have the Possession in him, and that the Tenant had ejected him; on which Ejectment the Declaration was founded only against the Tenant or casual Ejector.

The former Practice.

But this Method being found inconvenient in such Cases where there was a Tenant in Possession; for that such Tenants or casual Ejectors would often suffer Judgment to go against them by Default, &c. without giving Notice to their Landlords, or those who had the real Right, it frequently happened that

**Leases.**

*Why altered.*

Possessions were wrongfully obtain'd from those who had the best Right.

This Mischief occasion'd divers Rules of Court for varying the former Practice in Cases where there was a Tenant in Possession, viz. to serve him only with a Copy of the Declaration, with the Notice thereto annexed (endorsed or underwritten) by which he was enjoined to make a Defence, or to give Notice to his Landlord, in order for him to be admitted to defend his Title.

*The present Method where a Tenant is in Possession.*

But as the Court will not (nay, cannot by Law or Reason) admit the Landlord to be made Defendant, without admitting the Plaintiff's Claim; so in order thereto it is of Necessity, that such Lease, Entry, and Expulsion be actually made, as the Plaintiff hath set forth in his Declaration; or else, that such Lease, Entry, &c. be admitted by the Defendant (which is the same in Effect as if actually made) And this shews the Reason of those Rules made to confess a *Lease and Entry, and putting out of Possession.* See the Form, &c. ante.

*Why a Lease is necessary where there is no Tenant.*

Now I would ask my nameless Gentleman, or Attorney, how the above Method can be pursued, where there is no Tenant in Possession? who shall confess *Lease, Entry, and Expulsion*, or perform the Requisites the Law requires; or in short, against whom shall the Judgment be given in such a Case? or how, or in what Form will he have his Judgment enter'd? for the Judgment being to recite a Lease and Entry, &c. where there is no Lease or Entry, &c. either in Fact, or in Law (*i. e.* confessed) it is a Repugnancy in Terms to

say

say he shall recover a *Possession* of what he was never possessed; for the very *Gift* or Foundation of the Action in this Case is, the Ejectment or Expulsion from a House, Land, &c. of which he was formerly possessed.

Leases.

Hence therefore I conceive it will clearly appear from what is before said, that an Ejectment Lease is still absolutely necessary to ground an Action in this Case, where there is no Tenant of the Premises. Nay, supposing the late Stat. 4 Geo. 2. could or should be extended to Cases where there was no such Tenant; yet notwithstanding that Act, such a Lease must be made in order to try the Title. And what our young Clerk has said, *That in such a Case the hanging or fixing of the Declaration on the Door of the Messuage, or notorious Place of the Land, be deem'd good Service*; (inferring that it is sufficient without any such Lease) is founded on a double Mistake. For,

*An Ejectment Lease necessary where there is no Tenant.*

*First*, The Service of the Declaration in the Manner prescribed by the Act, can only relate to the *Service of the Declaration* after a Lease and Entry made: And it being intended, in order to try the Title, where there is no Tenant; 'tis impossible to try such Title in an Ejectment, without making a Tenant to the Premises, which Tenant is to be actually made or admitted, as aforesaid; and the Declaration is to be served subsequent to the making of such Lease. *Ergo, &c.*

*Objection answered.*

*Secondly*, The said Statute doth neither in its Words or Intent, extend to such Cases as our young Clerk would have it, *i. e.* to all

**Leases.** Cases in general where there is no Tenant, &c. it being expressly restrain'd to Cases between Landlords and their Tenants, and only See Sect. 2. of the Act infra. to such Leases where there is a Right to re-enter for Non-Payment of Rent. In which Cases there is not only a Tenant in Possession; but also it vastly differs from other Ejectments for the Trial of Titles; for here the Title is confessed by the Tenant's Acceptance of the Lease from the Landlord.

Stat. 4 G. 2.  
recited.

But to clear this Matter more fully, I shall recite the several Clauses of the Act, which as our Clerk confesses is a useful Law between Landlords and Tenants. And enacts,

1. That in Case any Tenant for Life, or any Term for Years, or other Person coming into the Possession of Lands or Tenements by Collusion with such Tenant, shall wilfully hold over any Lands or Tenements after the Determination of such Term or Terms, and after Demand made or Notice in Writing given for delivering the Possession thereof by the Landlord or Lessor; the Person so holding over shall pay double the yearly Value; and the Defendant in such Action shall give special Bail, and have no Relief in Equity.

Note, The above-mentioned Mistake arises from not understanding the Words of this Clause,

2. But in all Cases between Landlord and Tenant, after the 24th of June 1731, when half a Year's Rent shall be in Arrear, the Landlord having a lawful Right to re-enter for Non-Payment of the Rent, may serve a Declaration in Ejectment without a formal Demand or Re-entry, or affix such Declaration on the Door of any demised Messuage, or notorious Place of the Lands, which shall be deemed a legal Service;

Service ; and on Proof that half a Year's Rent was due before the Declaration was served, and no sufficient Distress on the Premises, the Lessor shall recover Judgment and Execution as fully as in Case a formal Re-entry had been made ; and if the Lessee shall suffer Judgment to be recover'd on such Ejectment and Execution, without paying the Arrears and Costs, and without filing a Bill within six Months after the Execution, he shall be barred from all Relief in Law or Equity, other than by Writ of Error : And the Lessor shall hold the demised Premises as discharged from such Lease ; but not to bar the Right of any Mortgagee, provided he pay all Rent and Costs within six Months after the Judgment obtained, and perform all the Covenants of the Lessee.

3. If the Lessor shall within the Term aforesaid file a Bill for Relief in Equity, no Injunction is to be granted, unless he within 40 Days after an Answer filed by the Lessor, shall deposite in Court the whole Rent in Arrear, besides Costs subject to the Decree of the Court : And if the Lessor shall actually enter into the Possession of the demised Premises ; and the Lessee on filing a Bill within the said Time limited, shall obtain a Decree in his Favour, the Lessor is to be accountable only for the Profits really made of the Premises during his Possession thereof, and the Lessee is to pay to the Lessor so much Money as that fell short of the whole Rent in Arrear before he be restored to his former Possession.

4. But if the Tenant before the Trial will either render to the Lessor, or bring into Court the Rent in Arrear, together with Costs, all further Proceedings shall cease: And if the Lessee be relieved in Equity, he shall enjoy the demised Premises, according to the Lease thereof, without obtaining a new Lease.

Quere.

5. All Persons, Bodies Politick and Corporate, may have the like Remedy by Distress and Sale in Cases of Rent Seck, Rents of Ailize and chief Rents, which have been duly (usually) paid for three Years within 20 Years before the first Day of this Parliament, or shall be hereafter created, as in Cases of Rent reserved upon Lease.

Note.

6. If any Lease shall be duly surrender'd in order to be renewed, and a new Lease granted by the chief Landlord, it shall be good and valid as if all the under Leases had been likewise surrender'd before the taking of such new Lease. And all Persons vested therewith shall be entitled to the Rents, and have the like Remedy for the Recovery thereof. And the under Lessees are to enjoy the demised Premises, as fully as if the original Leases had still continued; and the chief Landlord shall have the same Remedy for recovering his Rent, as he would have had in case the respective under Leases had been renewed under such new principal Lease.

7. This Act not to extend to Scotland

By

By the second Section of the foregoing Statute it appears, that the Provision thereby enacted, touching *Delivery of Declarations in Ejectment* in the Manner thereby prescribed, is only in Cases where the *Landlord has a Right to re-enter on his Tenant for the Non-payment of his Rent*, i. e. by express Provision of the *Lease*, or otherwise: And in such a Case it is no Wonder the Landlord should be restored to an actual Possession on the Tenant's forfeiting his Lease; seeing the Tenant's Possession is in Law only a Possession in Trust for the Landlord, in whom the legal Possession always continued, notwithstanding the Tenant's actual Possession, which by the Non-payment of the Rent became a tortious and wrongful Possession, and void *ab initio* as to the Landlord, who is therefore supposed in Law to be remitted to his ancient Possession, and that the Tenant has wrongfully enter'd upon that Possession; so that in that Case there is no need of any *new Lease* to ground an Ejectment. And therefore in that Case the Delivery of a Declaration, or fixing it on the Door of the House, or any notorious Place of the Lands (as the Act directs) will doubtless be sufficient without any Lease, &c.

*But Note; After you have in such Case so served or affixed the Declaration, you are to make an Affidavit thereof thus.*

**A.** B. of, &c. (or A. B. Clerk to G. S. one of the Attorneys of this Honourable Court) maketh Oath, That he this Depo-  
The Affidavit consequent to the fixing, &c. of the Declaration.

**Leases.**

ponent did on *such* a Day of *November* last past, pursuant to the Act of Parliament in that Case lately made and provided, serve a Copy of the Declaration in Ejectment hereunto annexed, with the like *English* Subscription, as is to the said annexed Declaration, by affixing the aforesaid Copy upon the Door of the said Messuage, being the Premises in Question (or upon the Gate of such a Field, being a notorious Place, and Part of the Premises in Question) in the said Declaration mentioned, no Tenant then dwelling or being in the actual Possession of the said Premises. And this Deponent further saith, That there was more than half a Year's Rent of the said Premises then in Arrear, and due and owing from T. D. the late Tenant or Occupier thereof to the Plaintiff the Lessor (not Plaintiff's Lessor) before the said Declaration was so served as aforesaid. And that no sufficient Distress then was, or now is upon the said Premises, as he this Deponent hath been inform'd, and verily believes to be true; and further this Deponent saith, That he hath seen the Counterpart of the Lease, whereby the said Plaintiff the Lessor demised the aforesaid (Messuage and) Premises to the said T. D. for the Term of fourteen Years, at and under the annual Rent of 20 *l.* a Year, payable quarterly (half yearly) in which said Lease is contained the usual Clause for the Lessor's Re-entry on the Non-payment of the said Rent.

**Note.**

*Note.* These and all other Affidavits must be made on a double six-penny Stamp.

*Note*

## In EJECTMENT on

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**Rules.**

*Directions  
touching Rules  
by Assent, &c.  
in B. R.*

*Note also,* All Rules by Consent are to be signed by the Attorneys both of the Plaintiff and Defendant, and in the *King's Bench* by one of the Judges (as before is shewn) whose Clerk takes 1 s. for the Judges Hand; after which you carry the Rule, which is without any Stamp, to the Clerk of the Rules, who keeps it and draws up a Rule of Court on a double six-penny Stamp, for which you pay him 5 s. and if (on Motion) your Affidavit appears to be a Country Affidavit (*i. e.* not sworn before one of the Judges of the Court) you also pay him 2 s. more for filing your Affidavit.

But in the *Common-Pleas* an Appearance is to be enter'd with the *Filacer*, for which you pay 2 s. and then you carry the Rule to the *Prothonotary*, to whom you also pay 2 s. for the Imparance; and afterwards the *Secondary* keeping that Rule will make you two Rules to the same Purport, each on a double six-penny Stamp, for which, and filing the Affidavit you pay 8 s. one of these Rules you annex to the Copy of the Issue and the Defendant's Attorney is to pay for his Part thereof, when you deliver the same with the Issue to him; upon the Back whereof you may give him Notice of Trial, as usual.

In C. B.

And herewith I shall conclude this Title of *Ejectments*, which being extended beyond its Limits, I am obliged to omit some Precedents at first designed to have been included in this Treatise, *viz. Homine Replegiandos, Prohibitions,*

**Heates.** *Inhibitions, and Consultations, Quare Impedit, Replevins, &c.* the Forms of which may be seen in the *English Lawyer* already by me published: And therefore I shall only add in this Collection some necessary Precedents and Observations, touching *Actions of Trespass*, as they are and ought to be distinguish'd from those of *Trespass on the Case*, which you will find before, in the Head of *Malseazance*, under the Title *Actions on the Case*.

## OF DECLARATIONS, &amp;c.

## IN TRESPASS.

**A**N Action of Trespass generally lies *Trespass* where any Force or Violence is il- *where it lies.* legally done to the Person, either of a Person, or of his Wife, Children or Servants, or of Lands, Clofes, Woods, Pastures, &c. or of his Houses, Gardens, Fisheries, Fairs, Markets, Pounds, &c. or of his Goods and Chattels, either animate, as Horses, Sheep, Dogs, &c. or inanimate as Household Goods, his Wares, Commodities, &c. of all which I shall give some Precedents.

And first, for a Trespass done to the Person, *1st Where done* it lyes either for a *Menace*, which deters one *to the Person.* from going about or transacting his lawful Affairs; but herein I conceive some Malice ought to appear, and not to be founded on Words of meer Heat and Passion; and the *Menace.* Menace must threaten a Killing, Wounding, or Beating; and so Loss or Damage must follow to the Party threatned, by the Occasion of such Menace. See 18 E. 4. 28. 10 E. 4. 28. 7 E. 4. 24. 3 H. 6. 18.

Or for an *Assault*, as where one unlaw- *Assault.* fully setts upon me, and attempts or endeavours to beat me, or to strike me, or where I am within his Reach, he strike at me,

**Assaults.** me, or even holds up his Stick to strick me, or thrust or push at me, or throw Stones at me, tho' he does not hit me, and so if one throws Drink, &c. in my Face, or on my Clothes, &c. but if one holds up and shakes his Stick, or throws Stones at me at a great distance, so that I am in no Danger of being struck, or if he does any of the Precedent Acts merrily or accidentally, and not purposely, no Action lyes.

**Battery.** And so it is even in the Case of *Battery*, which properly is an unlawful beating or striking, if such striking, &c. be against his Will, or by Accident, or unavoidable Necessity, no Action lyes.

**Maihem.** *Maihem*, is where by such Battery I am deprived of the Use of any principal Member of my Body, as a Hand, Leg, Finger, Eye, Fore-Tooth, &c. so that I am thereby more unfit for publick Service. For this I may have this Action, or an Appeal of *Maihem*, and recover Damage according to the Hurt done me; and if it fall within the Stat. Car. 2. commonly called Sir John Coventry's Act, the Party may be indicted, and suffer Fine and Imprisonment during Life; but if the Hurt be small, and no dismembring of the Body, an Action of Trespass only lies, 2.

**Imprisonment.** *Imprisonment*, (unlawful) is either where there is no good Cause or Ground for it, or where he that does it has no good Authority, or where 'tis done in a wrong Manner, i. e. where the Authority is not rightly executed, as if one arrests at a forbidden Time, or in a forbidden Place, or puts one in a wrong Prison, and the like.

And

And Note; every undue Restraint of Liberty is *False Imprisonment*, as where one without Cause lays hold on me, and holds me forcibly in his Arms, or forcibly keeps me in his own or another's House, &c. or ties me to a Tree or Post, or puts me in the Stocks, &c. or any other Way restrains me of my Liberty against my Will. See 9 Co. 66. 69.

So if one to whom I owe Money, or have done a Trespass, &c. shall of his own Head, without any Warrant, imprison or restrain me till I pay him the Debt, or satisfy him for the Trespass, &c. or till I enter into a Bond, or Statute, or execute a Release, &c. I may have an Action of Trespass and false Imprisonment against him.

And yet where I am duly imprisoned by a legal Warrant, altho' the Action or Suit be false or feigned (as where no Money is due, or the Debt paid, &c.) 'tis said in such Cases I can't have this Action (See 43 E. 3. 35.) But I may have a Special Action on the Case against the Prosecutor, if it appear to be malicious; see before Tit. Actions on the Case.

Note.

A De-

Assault, &amp;c.

## A Declaration on an Assault, &amp;c. in B. R.

Michaelmas 5 George I.

In B. R.  
Assault. See  
M. S. 1 Mod.  
Intr. 386.

Went to wit.

**A** Brabam Warwick complains of John Soames in Custody of the Marshal of the Marshalsea, &c. (*vide infra*) for that he the said John on the 30th Day of June, in the fourth Year of the Reign of the Lord George, now King of Great Britain, with Force and Arms, *to wit*, with Swords, Staves (Clubs) and Knives (Daggers) at Maidstone, in the County aforesaid, made an Assault upon him *A.* and him beat, wounded, and evilly treated; and then and there did to him other Enormities (Wrongs) against the Peace of the said Lord the now King, and to the Damage of him *A.* 10 l. and thereupon (thereof) he brings his Suit.

Thomas Basset by R.

Burt. Attorney, for  
the Plaintiff.R. Greenhill Attorney  
for the Defendant.

Pledges of { John Doe.  
Prosecution { Rich. Roe.

## 417

**Peterson.**

# R.

**A.** B. late of *Westminster*, in C. B.  
in the said County, *The like.*

**The like.**

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And also then and there with a certain Gun called a Musket (Pistol, &c.) shot and discharged certain leaden Shot, (Bullets, &c.) upon and into the Body of him C. whereby the same C. became grievously wounded, so that his Life was greatly (very much) impaired of, and did to him other Enormities,

E e

६५.

Person.

Ec. or if the wounding be of another kind, set it forth as it is (in general.)

Imprisonment.

But if the Party was imprisoned, it must be laid in your Declaration in *C. B.* thus: After the first *evilly treated*, say, And also took and imprisoned him the said *C.* and him so in Prison, for a long Time detained, and did to him other Enormities, (Ec. as above) to the second *evilly treated*, and then add, And also then and there him took and imprisoned, and him there so in Prison for a long time, *to wit*, for the Space of sixteen Weeks detained, contrary to the Laws and Custom of this Realm of our Lord the King, and then and there did to him other Enormities, (*as above*.)

Note: and see  
the Form in  
*C. B.*  
post 446.

By which and other Precedents you may observe, that the Method of *C. B.* is in Effect, to press the same Charge twice over, which I think is needless, and may be well avoided by setting forth in the former Part of the Declaration the Nature of the Action only in general, as assaulted, beat, wounded or imprisoned, as the Case is, and in the later Part thereof to set it forth more particularly, and not to repeat all the same Matter and Words twice over as many do; and therefore I think the King's Bench Forms in this Particular are more Eligible, *viz.*

B. R.

A Declaration  
on an Assault,  
Battery and false  
Imprisonment.

London to wit.

A. B. of, Ec. complains of  
A. C. D. in the Custody of  
the Marshal of the Marshalsea of the Lord the  
now King, being before the King himself, of  
that, That he on *such a Day* in *such a Year*  
of the Reign of our said Lord the now King,  
with Force and Arms (Ec. *supra*) in the  
Parish

## In TRESPASS to the

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Parish of *St. Mary of the Arches*, (or *Bow's*) in the Ward of *Cheap*, made an Assault upon him *A.* and him beat, wounded, imprisoned, and evilly treated; and also continued (kept) and detained him the said *A.* in Prison for a long time, *to wit*, for the Space of sixty Days, against the Will of him the said *A.* and contrary to the Laws and Customs of (this Realm of) *England*, and did to him other Enormities, &c. (as before.)

Person.

Note.

*But if an Infant is Plaintiff it must be in this Form by his next Friend or Guardian.*

*Essex to wit.* **A.** B. by T. B. his Father, who is admitted by the Court of the Lord the now King, (being before the King himself *Q.*) to prosecute for the same *A.* as the next Friend of him *A.* who is within the Age of one and twenty Years, complains of *C. D.* in the Custody of the Marshal of the *Marshalsea* of the Lord the now King, being before the King himself, of that, That he the foresaid *C.* on *such* a Day in *such* a Year of the Reign of our said Lord the now King, at *such* a Place, in the said County of *Essex*, with Force and Arms, *to wit*, &c. (as before.)

B. R.  
Declaration  
by an Infant  
by his next  
Friend.

Person.

*A Curious Precedent of a Declaration, Pled, and Issue to Part, with a Replication, Rejoinder and a Demurrer to other Part, and Judgment thereon; in an Action of Assault and Imprisonment.*

C. B.  
Assault, Bat-  
tery and Im-  
prisonment.  
Trin. 3 G. 1.  
Roll 1598.  
Foley.

Note.

Oxfordshire to wit. **Z** Achary Hinds, late of  
W. in the County a-  
foresaid, Apothecary, and John Colesborn,  
late of the same Victualler, were attached to  
answer to T. Reynolds of a Plea, why with  
Force and Arms at Woodstock, they made an  
Assault upon him T. and him beat, wounded,  
imprisoned, and evilly treated, and him long  
detained in Prison, against the Law and  
Custom of the Kingdom of the Lord the now  
King of Great Britain; and did to him other  
Enormities; to the great Damage of him T.  
and against the Peace of the Lord the now  
King; and whereof he the same T. by J. W.  
his Attorney, complains, That they the fore-  
said Z. and J. C. on the first Day of April, in  
the third Year of the Reign of the Lord the  
now King, with Force and Arms, to wit,  
with Swords, Staves and Knives (Daggers) at  
Woodstock afore said, made an Assault upon  
him T. and him beat, wounded, imprisoned,  
and evilly treated, and him for a long time,  
to wit, for the Space of thirty Days there de-  
tained in Prison against the Will of him T.  
and against the Law and Custom of the Realm  
of the Lord the now King of Great Britain,  
and did to him other Enormities; to the  
great Damage of him T. and against the  
Peace

# IN TRESPASS to the

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Peace of the said Lord the now King, where-  
of he saith, That he is the worse, and hath  
Damage to the Value of 100*l.* and thereof  
he brings his Suit.

*Person.*

And they the said Z. and J. by M. D. their  
Attorney, come and defend the Force and  
Injury when, where and how this Court shall  
award; and as to the coming with Force and  
Arms, and also as to the foresaid wounding  
above supposed to be done to the said T. the  
said Z. and J. do say, That they are Not  
guilty, and hereof they put themselves upon  
the Country, and the foresaid T. in like Man-  
ner, and as to all the rest (Residue) of the  
Trespas, Assault and Imprisonment above  
supposed to be done, they the said Z. and J.  
do say, That the said T. ought not to have  
his Action thereof against them, because they  
say, That before the Trespas above suppo-  
sed to be done, *to wit*, at the Court of the  
Lord the now King of Record, called *The*  
*Portmoot*, held for the Borough of *New Wood-*  
*stock*, in the said County of *Oxford*. according  
to the Custom of the said Borough used and  
approved in the same Borough from the Time  
whereof the Memory of Man is not to the  
contrary, at the *Guild-Hall* of the same  
Borough, on *Monday*, *to wit*, the 11th Day  
of *March*, in the third Year of the Reign of  
the Lord *George*, now King of *Great Britain*,  
before J. *Appletree*, the then Mayor of the  
said Borough, he the said Z. according to the  
Custom of the same Court used and approved  
for (during) the whole Time aforesaid, did  
affirm in the same Court his certain *Plaint*  
against the said T. R. the now Plaintiff, in a

*Plea: As to  
the Force and  
Arms, and  
also the  
wounding Not  
guilty.*

*And Issue to  
the Residue,  
Judgment, &c.  
On a *Plaint*  
in a Borough  
Court.*

*The Plaint.*

**Person.**

**Pledges.**

**Nil habet.**

**Capias.**

Plea of Trespass on the Case for a certain Cause of Action accruing and arising within the Borough aforesaid, and then and there found Pledges of prosecuting his said Plaintiff, *to wit*, *John Doe* and *Richard Roe*, upon which said Plaintiff, for that, that at the same Court, it was testified by the said *J. Colesborn* then one of the Serjeants at the Mace of the said Borough, being a Minister (Officer) of the said Court, That the said *T.* had nothing within the Borough aforesaid, whereby he could be attached at the same Court, held the said 11th Day of *March*, in the said third Year of the said Lord the now King, as aforesaid, on the Petition of the said *Z.* according to the Custom of the said Borough, used and approved in the same, for the whole Time aforesaid, the said *J. Appletree*, being then Mayor of the said Borough as aforesaid, commanded him the said *J. C.* then being Serjeant at Mace of the said Borough, and an Officer of the said Court as aforesaid, That he should, according to the Custom of the said Borough, take the Body of the said *T.* if it could be found within the Liberties of the same Borough, and keep him the said *T.* safely, so that he had his Body at the then next Court of the said Lord the King, to be held before the said *John Appletree*, then Mayor of the said Borough, on *Monday* the 25th Day of the same Month of *March*, in the third Year aforesaid; to answer to the said *Z.* in the Plea of his said Plaintiff: by Virtue of which said Command (Precept) afterwards, and before the said then next Court, *to wit*, on the 15th Day of *March*, in the said third Year of the said Lord the now King; he the said *J. C.* being

being then so Serjeant at Mace, and an Officer of the said Court as aforesaid, did at *Woodstock* aforesaid, in the County aforesaid, according to the said Custom of the said Borough, by the Mandate (Direction) of him *Z.* take and arrest the said *T.* and him the said *T.* being so arrested, did for default of Manucaptors (Bail) according to the Custom of the said Borough, carry to the Goal of the same Borough at *Woodstock* aforesaid, in the County aforesaid (he the said *J. C.* being then and still Keeper of the same Goal) and detained him the said *T.* in the said Goal, during the said Time in the said Declaration mentioned, for want of Bail in (to) the Action or Complaint aforesaid, which said Arrest and Imprisonment are the Residue of the foresaid Trespass, Assault and Imprisonment, whereof the said *T.* doth above in his Declaration complain; and this they are ready to aver, whereof they pray Judgment; if the said *T.* ought to have his said Action thereof against them, with this (further) That they the said *Z.* and *J.* will aver, That he the said *J.* did at the said then next Court of Record held for the said Borough as aforesaid, after the issuing of the foresaid Precept, return the same Precept to have been in all Things served and executed.

Person.

Imprisonment.

And the said *T.* as to the Plea of the said *Z.* and *J.* as to the Residue of the Trespass, Assault and Imprisonment aforesaid above pleaded in Bar saith, That he (for any Thing by them the said *Z.* and *J.* alledged above in the same Plea) ought not to be barred from having his said Action thereof against them,

Replication.

*Verdict.*

*De Jure  
prop. &c.*

*Traverse.*

because by protesting that no such Precept issued from the said *J. Appletree*, to the said *J. C.* to take and arrest him *T.* in Manner and Form as they the said *Z.* and *J.* have by their Plea above alledged; for Plea he the said *T.* saith, That the said *Z.* and *J.* did of their own Wrong, make the said Assault upon him *T.* and, him beat, evilly treated and Imprisoned, and him in Prison detained, as he the said *T.* hath above complained against them, without that, That the said *J. C.* did at the next Court of Record held as aforesaid, for the said Borough, after the issuing of the said Precept, Return the same Precept in all Things served and executed in Manner and Form as they the said *Z.* and *J.* have above by pleading alledged, and this he is ready to aver; wherefore, For that they the said *Z.* and *J.* have acknowledged (confessed) the said Trespass, Assault and Imprisonment to be done as aforesaid, he the said *T.* prays Judgment, and his Damages by Occasion of the said Trespass, Assault and Imprisonment to be adjudged to him.

*Rejoinder.*

And the foresaid *Z.* and *J.* as to the said Plea of the said *T.* as to the Residue of the Trespass, Assault and Imprisonment above, by replying pleaded, do say, as before, That he the said *J. C.* did at the said then next Court of Record, as held aforesaid for the said Borough, after the issuing of the said Precept, Return the same Precept in all Things executed in Manner and Form as they the said *Z.* and *J.* have by pleading above alledged, and of this they put themselves on the Country.

*To this Replication the Plaintiff Demurrs generally, and the Defendants join in the Demurrer as usual, upon which a Curia Advisare, &c. is entred till from the Day of St. Martin in 15 Days next, &c. and then there is a further Entry of a Judgment on the Roll, which is very remarkable, viz.*

**Person.**

*The Plaintiff Demurrs, &c.*

And the said T. for that, That they the said Z. and J. do say, (have said) nothing in Bar of the said Action of the said T. as to the beating of him T. whereby he the said T. remains against them the said Z. and J. undefended, prays his Judgment and his Damages by Occasion thereof to be adjudged to him; and for that, That he the said T. ought to recover his said Damages by Occasion of that Trespass, whereof he is and remains against them the said Z. and J. undefended, and because it is unknown what Damages he the said T. hath sustained by Occasion of that Trespass, for which he ought to recover his said Damages as aforesaid, and it is (also) unknown whether the foresaid Z. and J. will be convicted of the Residue of the said Trespass or not; and that if he be convicted, it is convenient there be but one Taxation of Damages made for the whole Trespass specified in one Writ; and that those Damages ought to be assessed by (one and) the same Jury of the Country: Therefore as well as to the Tryal of the Issue above joined to be tryed by the Country; as also to enquire what Damages he the said T. hath sustained as well by Occasion of the said Trespass, whereof the said Parties have put themselves in the Judgment of the Court as aforesaid; if it shall happen,  
That

*A remarkable Entry of Judgment, &c.*

## Declarations, &amp;c.

Person.

Award of a  
Special  
Venire.

That the Judgment thereupon is rendered (given) for the said T. as by Occasion of that Trespass, whereof he the same T. remains in the Form aforefaid undefended against the said Z. and J. It is commanded to the Sheriff, That he cause to come here at the Time aforefaid, *twelve good and lawful Men, &c.*

Note; *The above Demurrer was argued on Friday the 22d Day of November 1717, when Judgment was thereon given for the Plaintiff. See Lilly 447. Lev. Entries 191.*

And with this I shall conclude the Head of Trespasses against a Man's Person, and next give some few Precedents of Trespasses against his Wife, Servants, Goods, &c.

*A Declaration in Trespass for assaulting a Man's Wife.*

For Trespass  
for assaulting  
a Man's Wife.  
Lev. Entries  
217.

Surrey to wit. J. K. and M. his Wife complain of R. F. in Custody of the Marshal, &c. For that, That he the said R. on such a Day in such a Year of the Lord George the second, now King of Great Britain, with Force and Arms, *to wit*, with Swords, Clubs and Daggers, at the Parish of D. in the Borough of Southwark, and County aforefaid, made an Assault upon her M. and her the said M. then and there beat, wounded, and evilly treated; so that her Life was greatly despaired of, and then and there did to her other Enormities against the Peace of the said Lord the now King; to the Damage of them the

the said J. and M. 200 l. and thereof they bring their Suit. *Which Form Mutatis Mutandis may also serve for C. B.*

Person.

*A Declaration for assaulting and lying with the Plaintiff's Wife, and detaining her, &c.*

London to wit.

**A.** B. complains of C. D. (*&c.* as in other Declarations in B. R. to) That he with Force and Arms in and upon *Elizabeth* the Wife of the said *A.* at *London* aforesaid, to wit, in the Parish of *St. Mary of the Arches*, in the Ward of *Cheap*, made an Assault, and her beat and evilly treated, and also her the said *Elizabeth* took, carried away, ravished, and carnally knew; and her from the said *A.* for a long Time, to wit, for the Space of six Months, against the Will of him the said *A.* did keep and detain, whereby he the said *A.* lost and was deprived of the Comfort, Fellowship, and Assistance (*Aid*) of the said *E.* for (during) the whole Time aforesaid, and did other Enormities to her the said *Elizabeth*, to the great Damage of him the said *A.* and against the Peace of the said Lord the now King; whereof he the said *A.* saith, That he is the worse, and hath Damage to the Value of 500 l. and thereof he brings his Suit,

In B. R.  
For lying with  
the Plaintiff's  
Wife.

Detainer.

Note, The Lines in Italick *supra*, are only to be inserted where the Wife is kept from her Husband. And for other special Declarations of the like Kind, see the Practising Attorney last published in English, pag. 152, 153. as also Lilly's Entries in Latin, pag. 434, 441.

A De-

## Cattle.

*A Declaration in Trespass for assaulting  
(and beating) ones Servant.*

*In B. R.  
Assault on a  
Servant.*

**A.** B. (*Ec. as above to*) with Force and Arms, at *J.* in the County aforesaid, in and upon *G. H.* a (Menial or Household) Servant of the said *A.* did make an Assault, and him the said *G.* then and there did beat, wound, and evilly treat, so that he the said *G.* could not possibly go about (attend to) or perform the lawful Business of the said *A.* whereby the said Business remain'd (was left) undone (unperform'd) and the said *A.* lost and was deprived of the Service of his said Servant from the said Day of, *Ec.* to the Day of exhibiting this Bill, and did to the said *A.* other Enormities against the Peace (*Ec. as above.*)

*Hitherto of Trespasses to the Person, next as  
to his Goods, 1. animate; or, 2. inanimate.*

*A Declaration for wrongfully impounding  
the Plaintiff's Cattle.*

*In B. R.  
For impound-  
ing Cattle.*

**A.** B. (*Ec. as above to*) That he with Force and Arms at *D.* in the said County, did take and impound, without any reasonable Cause, the Cattle, *to wit*, one Cow, two Bullocks, *Ec.* of him the said *A.* then and there found, of the Price of 20 *l.* And the said Cattle being so impounded, did there detain for the Space of three Days, so that one of the said Bullocks died in the said Pound,

Pound, and the other became very much the worse, contrary to the Law and the Custom of *England*, and against the Peace of the Lord the now King; whereof he the said *A.* saith, that he is the worse (*Ec. ante.*)

Cattle.

*The like in C. B.*

**A.** B. late of      and C. D. late of      were attached to answer to E. F. of a Plea, *Why they with Force and Arms, and without any reasonable Cause, at J. in the said County, took and impounded the Cattle of him the said E. and did to him other Enormities, contrary to the Law and Custom of England, and against the Peace of our Lord the now King. And whereof he the said E. by W. B. his Attorney complains, that they the said A. and C. on the first Day of November, in the sixth Year of the Reign of our Lord the now King, at J. aforesaid, did with Force and Arms, and without any reasonable (legal) Cause, take and impound the Cattle, to wit, three Cows, &c. of him the said E. of the Price of 5 l. and the same Cows then and there so impounded, they the said A. and C. did for a long Time, to wit, for the Space of two Days therein detain, contrary to the Law and Custom of England, and did to the said E. other Enormities against the Peace of our said Lord the King, whereof he saith, &c.*

*In C. B.  
The like.  
Note this Precedent.*

*Or if it be for taking a Setting-Dog, &c. say Taking away as above to. With Force and Arms, and without any reasonable Cause, at D. aforesaid, did*

## Cattle.

*A Declaration in Trespass for assaulting  
(and beating) ones Servant.*

*In B. R.  
Assault on a  
Servant.*

**A.** B. (*Ec. as above to*) with Force and Arms, at *J.* in the County aforesaid, in and upon *G. H.* a (Menial or Household) Servant of the said *A.* did make an Assault, and him the said *G.* then and there did beat, wound, and evilly treat, so that he the said *G.* could not possibly go about (attend to) or perform the lawful Business of the said *A.* whereby the said Business remain'd (was left) undone (unperform'd) and the said *A.* lost and was deprived of the Service of his said Servant from the said Day of, *Ec.* to the Day of exhibiting this Bill, and did to the said *A.* other Enormities against the Peace (*Ec. as above.*)

*Hitherto of Trespasses to the Person, next as to his Goods, 1. animate; or, 2. inanimate.*

*A Declaration for wrongfully impounding  
the Plaintiff's Cattle.*

*In B. R.  
For impound-  
ing Cattle.*

**A.** B. (*Ec. as above to*) That he with Force and Arms at *D.* in the said County, did take and impound, without any reasonable Cause, the Cattle, *to wit*, one Cow, two Bullocks, *Ec.* of him the said *A.* then and there found, of the Price of 20 *l.* And the said Cattle being so impounded, did there detain for the Space of three Days, so that one of the said Bullocks died in the said Pound,

Pound, and the other became very much the worse, contrary to the Law and the Custom of *England*, and against the Peace of the Lord the now King; whereof he the said *A.* saith, that he is the worse (*Ec. ante.*)

Cattle.

*The like in C. B.*

**A.** B. late of                      and C. D. late of                      were attached to answer to E. F. of a Plea, *Why they with Force and Arms, and without any reasonable Cause, at J. in the said County, took and impounded the Cattle of him the said E. and did to him other Enormities, contrary to the Law and Custom of England, and against the Peace of our Lord the now King. And whereof he the said E. by W. B. his Attorney complains, that they the said A. and C. on the first Day of November, in the sixth Year of the Reign of our Lord the now King, at J. aforesaid, did with Force and Arms, and without any reasonable (legal) Cause, take and impound the Cattle, to wit, three Cows, &c. of him the said E. of the Price of 5 l. and the same Cows then and there so impounded, they the said A. and C. did for a long Time, to wit, for the Space of two Days therein detain, contrary to the Law and Custom of England, and did to the said E. other Enormities against the Peace of our said Lord the King, whereof he saith, &c.*

*In C. B.*

*The like.*

*Note this Precedent.*

*Or if it be for taking a Setting-Dog, &c. say Taking away as above to. With Force and Arms, and without any reasonable Cause, at D. aforesaid, did*

## Declarations, &amp;c.

*Cattle, &c.* did take and carry (lead) away one Setting-Dog of him the said *E.* of the Price of 5*l.* and did to him other Enormities (*&c. as above to*) complains, that he the said *A.* on *such* a Day, in *such* a Year of the now King, at *D.* aforesaid (or at *J.* in the said County of *M.*) did then and there with Force and Arms, and without any reasonable Cause take and carry (lead) away one Setting-Dog of him the said *E.* of the Price of 5*l.* and did to him other Enormities against the Peace (*&c. as before.*)

*A Declaration for a wrongful Taking, &c.  
of the Plaintiff's Goods.*

*In B. R.  
For taking  
Goods, &c.  
Note.*

*Somerset to wit.* *A.* B. Gentleman, complains of *C. D. E. F.* and *G. H.* in Custody of the Marshal of the *Marshalsea* of the Lord the King, being before the King himself, That they the said *C. D. E. F.* and *G. H.* on *such* a Day, in *such* a Year of the Reign of the Lord the now King, with Force and Arms, unlawfully entered into the House of the said *A.* in the Parish of *N.* in the said County of *S.* and then and there took and eat up the Meat and Drink of him *A.* to the Value of 50*s.* and also then and there took and carried away the Goods and Chattels of the said *A.* then and there found to the Value of 20*l.* and also then and there burnt up, and otherwise used and destroyed the Wood (Faggots) and Coals of the said *A.* then and there found to the Value of 10*s.*

*His Victuals.*

*And*

And also kept and used the Possession of the <sup>Goods, &c.</sup> said House of the said *A.* for the Space of ten Days then next following, whereby the said <sup>His Wood,</sup> *A.* could not have the Use or Benefit of his <sup>&c.</sup> said House, for (during) that whole Time; and did to him other Enormities, against the Peace of the said Lord the now King, and to the Damage of the said *A.* 200 *l.* and thereof he brings his Suit.

And also then and there broke, cut, tore, <sup>Door.</sup> and spoiled one wooden Door of the said *A.* <sup>Wainscot.</sup> then and there found of the Value of 40 *s.* <sup>Windows.</sup> And also then and there broke and spoiled the Wainscot of the said *A.* (or the Glass Windows of the said *A.*) belonging to the afore-said House, the Value of 3 *l.* in like Manner then and there found.

Note, Any of the above or the like Clauses beginning (And also) may be added or omitted as there is Occasion.

Or it may be for breaking and entering a Stall in a Fair or Market, viz.

That he such a Day, &c. with Force and <sup>Shed.</sup> Arms broke and entered the Close of the said <sup>Stall.</sup> *A.* at *S.* in the said County of *G.* and then and there broke and pulled down one Shed (or one Stall and one Standing) of the said *A.* of the Value of 40 *s.* containing divers Goods, Wares, and Merchandizes of the said *A.* then exposed for Sale, &c. whereby he the said *A.* lost and was deprived of the Profit and Advantage of his said Close and Shed (Stall, Standing) and did to the said *A.* other Enormities. &c. see before.

*Gardens.**Note.*

But Note, where a consequential Damdage is laid, as the Loss of the Profits of his Close, or of the Sale of his Goods, &c. an Action of Trespas on the Case, or Malfeasance, is most proper. See before Malfeasance under Title Case.

*A Declaration for a Trespas in a Garden by spoiling his Gravel-Walks, &c.*

*Trespas in  
Gardens laid  
divers Ways.*

**T**HAT the said *B.* such a Day and Year with Force and Arms, broke and enter'd the Garden of him the said *A.* at *D.* in the said County; and then and there with one Gelding and one Mare (or with Horses, Cattle, Hogs, &c.) spoiled and ruined the Gravel-Walks (or pulled up, broke, and destroy'd the Trees, Plants, Fruits, &c.) of the same Garden. And also, That he the said *B.* afterwards, to wit, on the (same Day and Year) with Force and Arms aforesaid, broke and enter'd the Garden of the said *A.* at *D.* aforesaid, in the same County, and then and there with one other Gelding, and one other Mare (&c.) trod down, subverted, rooted up, destroy'd, &c. one other Gravel-Walk (&c. as the Case is) and did to him *A.* other Enormities (&c. as before.)

*A De-*

*A Declaration for a Trespass in a Fishery.*

Essex to wit. **E.** P. and **W. K.** complain of **J. R.** in the Custody of the Marshal of the Lord the now King, being before the King himself, of that, that he the said **J.** on the second Day of May, in such a Year, with Force and Arms enter'd and fished in the several Fisheries of them the said **E.** and **W.** within the Manor of **B.** in the said County of **E.** and then and there took and carried away from and out of the said Fishery, 50 Bushels of Oysters, 1000 Soles, 1000 Flounders, 1000 Plaice, 200 Thornbacks, being the Fish of the said **E.** and **W.** to the Value of 40 l. *And also of that, That he the said J. on the third Day of May, in the Year aforesaid, with Force and Arms, enter'd and fished in the several Fisheries of the said E. and W. at a certain Place called G. lying within the said Manor of B. in the County aforesaid; and then and there took and carried away certain Fishes of them the said E. and W. to wit, 100 Bushels of Oysters, 2000 Soles (and so set forth the Number and Kinds of the Fish taken, according to your Proof) of the Value of 50 l. (or what Value you can prove) and then and there did to the said E. and W. other Enormities against the Peace of the Lord the now King, &c. (see before.)*

*For Entering the Plaintiff's Fishery, and taking their Fish.*

*Note.*

*2d Count of another taking, &c.*

Rescous.

*A Declaration for rescuing a Horse that the Plaintiff was driving to Pound.*

In C. B.  
Rescuing a  
Horse driving  
to Pound.

*Offer to mit.* **A.** B. late of— was attached to answer to C. D. of a Plea, That whereas the same C. had by J. S. his Servant, caused to be taken one Horse, doing Damage in certain Lands of him the said C. called *Black-Acre*, at D. in the said County of E. and would for that Damage so done, have impounded the same Horse by his said Servant, according to the Law and Custom of *England*. He the said A. with Force and Arms then and there rescued that Horse from being impounded. And other Enormities did to him the said C. and whereof he the said C. by G. H. his Attorney, complains, *That whereas* he the same C. on such a Day, in such a Year, in the Reign of the Lord the now King, had by J. S. his Servant, caused to be taken one Horse doing Damage, in certain Lands of him the said C. called *Black Acre*, at D. in the said County of E. and would for that Damage have (Ec. repeating again the same Matter as is usual in C. B.) See hereafter, pag. 441, 442. how such Repetitions may be avoided; and see the following Page here for the Conclusion.

*For breaking a Pound, and taking thence a Mare, not paying the Damage.*

**A.** B. (*Ec. as above to*) That whereas the same C. had at D. in the County aforesaid, taken a certain Mare doing Damage there in the Lands of him C. and had impounded the said Mare, according to the Law and Custom of *England*, he the said A. with Force and Arms broke that same Pound, and took and led away the said Mare from out of the said Pound; and did to the said C. other Enormities; and whereof he the said C. by G. H. his Attorney, complains, That whereas he the same C. on the first Day of *November*, in the third Year of the Reign of the Lord *George* the Second, now King of *Great-Britain*, had at D. aforesaid, in the said County of E. taken a certain Mare doing Damage there in the Lands of him the said C. and had impounded the said Mare, according to the Law and Custom of *England*, he the said A. on the said first Day of *November*, in the third Year aforesaid, with Force and Arms, *to wit*, with Swords, Staves, and Knives, there broke the said Pound, and took and led away the said Mare from and out of the said Pound. And other Enormities to him C. then and there did, to the great Damage of him the said C. against the Peace of the Lord the now King, from whence he saith, That he is the worse, and hath Damage to the Value of 10*l.* and thereof he he brings his Suit.

*In C. B.  
For breaking a  
Pound, &c.*

*Note this Pre-  
cedent.*

Closes, &amp;c.

*For breaking the Plaintiff's Close, and eating up and treading down his Grass, &c.*

*In B. R.  
Breaking a  
Close, and eat-  
ing his Grass.*

*Middlesex to wit.*

**A.** B. complains of C. D. in Custody of the Marshal (*see before*) for that he on *such a Day*, in *such a Year*, with Force and Arms enter'd the Close of him **A.** called *Combe-Close*, at **D.** in the County aforesaid; and then and there with his Feet in walking, trod down and (spoiled) consumed the Grass of the said **A.** then and there growing to the Value of 100 s. And also at divers other Days and Times, between *such a Day* and *such Day*, with Horses, Oxen, Cows, Hogs, and Sheep, did eat up and tread down, and consume other Grass of the said **A.** then there growing to the Value of 50 s. and then and there did to the said **A.** other Enormities against the Peace (*&c. as before.*)

*For*

*For breaking his Close, treading down his  
Grass, and carrying away his Corn.*

*In B. R.  
Breaking his  
Close, &c.  
and carrying  
away his Corn.*

**A.** B. complains of C. D. and E. F. in Custody, (*&c. as before to*) for that they on *such a Day in such a Year*, with Force and Arms broke and enter'd the Close of the said A. called *D. Close*, at *L.* in the County aforesaid, and with their Feet in walking trod down and consumed the Grass and Corn of him A. then and there growing, *to wit*, his Wheat, Barley, Oats, Pease, Beans and Rye, to the Value of 10 l. *And also* that they the said C. and E. did afterwards, *i. e.* on the same (*or some other*) Day in the Year aforesaid, with certain Beasts, *to wit*, Horses, Mares, Oxen, Cows, Hogs, Sheep, and Geese, eat up, tread down, spoil, and consume certain other Goods and Chattels of him the said A. *to wit*, 20 Sheafs of Bread Corn, 30 Sheafs of Maslyn Corn, 40 Sheafs of Rye, 50 Bundles of Pease, of him the said A. then and there found, to the Value of 20 l. and then and there did to the said A. other Enormities, (*&c. as before.*)

Church, &amp;c.

*A Declaration in Trespass by a Parson, for  
breaking and entering his Church, &c.*

*In B. R.  
For breaking  
and entering  
the Church.*

*And Parsonage  
House.*

*And taking  
away Elm-  
Trees.*

**A.** B. Clerk, complains of *C. D. E. F. G. H.* and *J. K.* in the Custody (*&c. as usual*) of that, That they the said *C. E. G.* and *J.* on the first Day of *December* in the sixth Year of the Reign of the Lord *George* the Second, now King of *Great-Britain*, with Force and Arms broke and enter'd the House of him *A.* called the Church at *S.* in the County aforesaid; and for a great (long) time, *to wit*, for the Space of six Weeks thence next following, *detained and kept him from and out of the possessing of his aforesaid House.* Whereby he the said *A. B.* lost and was deprived of the Use, Benefit, and Advantage of his aforesaid House, during the whole Time aforesaid. *And also* of that, That they the aforesaid *C. E. G.* and *J.* afterwards, *to wit*, on the same first Day of *November*, in the sixth Year aforesaid, at *L.* aforesaid, with Force and Arms broke and enter'd the House of him the said *A. B.* called the Parsonage House, at *D.* in the County aforesaid, and then and there broke and spoiled the Windows of the said House, *to wit*, 500 Squares of the Glass of him *A.* being Parcel of his said House, to the Value of 100 s. *And also* of that, That they the aforesaid *C. E. G.* and *J.* afterwards, *to wit*, on the same first Day of *November*, in the sixth Year aforesaid, at *L.* aforesaid, did root up and take and carry away one Elm-Tree of him the said *A. B.* then and there growing, of the Value of 4 l. and other

other Enormities then and there did to him *Church, &c.*  
the said *A.* against the Peace of the said Lord  
the now King, to the Damage of him *A.* 100 l.  
and thereof he brings his Suit.

*See the Law touching this Matter in The Com-  
pleat Incumbent, Chap. 39.*

*But where any Person has a Special Property  
in a Seat in the Church, or the like, there an  
Action will lye in the Owner's own Name, for  
taking, breaking, or carrying away of a Seat in  
a Church, as in the Case of Finch against Rey-  
nolds, Trinity, 3 Geo. 1. in which Case the  
Declaration was as follows.*

**Shropshire to wit.** *John Reynolds*, late of Bag-  
ley, in the County afore-  
said, was attached to answer to *Roger Finch*,  
Esq; of a Plea, why with Force and Arms  
he at *Hordely*, in the Parish Church of *Hord-  
ley*, and County afore said, did take, cut,  
break, and carry away a certain Bench, or  
ancient Seat of him *Roger*, of the Value of  
100 s. and did to him other Enormities to  
the great Damage of him *Roger*, and against  
the Peace of the said Lord the now King, and  
whereof he the same *Roger* by *J. Lacon* his  
Attorney, complains, That the afore said *John*  
on the third Day of *April*, in the third Year  
of the Reign of the Lord the now King, did  
with Force and Arms take, cut, break, and  
carry away a certain Bench or ancient Seat  
of him *Roger*, at *Hordley*, in the Parish of  
*Hordley* afore said, of the Value of 100 s. and  
did to him other Enormities, to the great  
Damage of him *Roger*, and against the Peace

*In C. B.  
Trespass in  
taking, break-  
ing, &c. a  
Seat in a  
Church.*

*Church, &c.* of the Lord the now King, whereof he saith, that he is the worse, and hath Damage to the Value of 20 *l.* and thereof he brings his Suit.

*But Note, To this Declaration the Defendant pleaded a long and special Plea in Justification of the Trespas, and in Bar of the Plaintiff's Action; whereto the Plaintiff reply'd, De Injuria sua propria absq. tali causa; to which Replieation the Defendant demurred; which being argued November 25, 1717, Judgment was for the Defendant.*

*Touching Seats in Churches and Chapels, see The Compleat Incumbent, pag. 382 to pag. 388.*

OF

PLEAS *in* TRESPASS.

*The most usual Plea in an Action of Trespass and Assault, is Not Guilty; in the like Form, as it is pleaded in Trespass on the Case, which see before in Title Case under the Head of Malfeasance; or if the Plaintiff begun the Assault, the Defendant may justify by a Plea of Son Assault Demefn, Son Assault. viz. That the Plaintiff himself begun the Justification. Assault; the Form of which see above in this Title; so in Trespass for Breach of his Close, or entring into Lands, &c. the usual Plea is Not Guilty; Or else a Justification may be pleaded ut infra, wherein you will find most of the Forms necessary to be observed in such Pleas, either of Not Guilty, or a Justification in Trespass; as also the Form of new Assignments, &c. Note also, The New Assignment. following Declaration is contrived as a Precedent to avoid that Repetition frequently used in C. B.*

*A brief*

Pleas, &amp;c.

*A brief Declaration in Trespass. for breaking and entring his Close, &c. against two who plead severally.*

*In C. B. Trespass for breaking, entering his Close, &c.*

Devonshire to wit. **R.** B. late of *L.* in the said County, and *W. H.* late of *L.* aforesaid, were attached to answer unto *E. B.* of a Plea of Trespass, why (wherefore) they on *such* a Day and Year, with Force and Arms, did break the Close of him the said *E.* at *G.* and his Grass there late growing, to the Value of 10 *l.* with certain Cattle (*naming their Kind as before, pag. 436, 437.*) did then and there eat up, tread down, and consume; and did to them other Enormities, to the Damage of him *R.* 10 *l.* and against the Peace of the Lord the now King, (*&c. as before.*)

*Plea of one Defendant, Not Guilty, the Force.*

And the said *R. B.* and *W. H.* by *R. S.* their Attorney, come and defend the Force and Injury, when and where, and as to the coming with Force and Arms, they and each of them say, *Not Guilty.* And as to the Residue of the said Trespass above supposed to be done, the said *R. B.* saith, that the said *E.* ought not to have the said Action, because he saith, that the Place in which the said Trespass is supposed to be done, is, and at the same Time of that Trespass so supposed, was a certain Place call'd the *Penns*, containing in itself 500 Acres of Land in *G.* aforesaid, extending itself from the South, from a certain Place called *G.* in *L.* aforesaid, unto  
a cer

a certain Place called *H.* in *G.* afore said, to-  
 wards the North-West, and so extending from  
 thence to *C.* towards the East, and that he  
 the said *R.* at the Time of the said supposed  
 Trespass, and long before was seized in his  
 Demesne as of Fee, of and in three Messua-  
 ges, and 26 Acres of Land, with the Appur-  
 tenances in *L.* afore said. And that he and all  
 those whose Estate he hath in the said three  
 Messuages, and 26 Acres of Land, with the  
 Appurtenances, from the Time the Memory  
 of Man have had and been accustomed to have  
 Common of Pasture, of and in the said Place,  
 called the *Penns*, within the Bounds and Li-  
 mits afore said, with all and all Manner of his  
 Cattle and living Creatures whatsoever, at all  
 Times of the Year, by Virtue of which the  
 said *R. B.* did at the said Time of the supposed  
 Trespass, put his said Cattle in the said Close,  
 in the said Place called the *Penns* in *G.* afore-  
 said, within the afore said Bounds and Limits,  
 to feed and eat on the said Grass there then  
 growing, for the using his said Common du-  
 ring the Time afore said, as it was for him  
 lawful to do; which Things are the same  
 breaking of the Close, treading, consuming,  
 and eating up the Grass, whereof the said *G.*  
 doth now above complain; and this he is  
 ready to aver; whereupon he prays Judg-  
 ment, if he the said *E.* ought to have his  
 said Action thereof against him.

*Pleas, &c.*

*And to the  
 rest, justifies  
 for Common.*

And the said *W. H.* saith, that the said  
*E.* ought to have no Action thereof against  
 him, because he saith, that the Place in which  
 the said Trespass is supposed to be done, is,  
 and at the said Time of that Trespass so sup-  
 posed,

*The Plea of  
 the other De-  
 fendant.*

## Declarations, &amp;c.

Pleas, &amp;c.

Claiming Title  
in Common.

posed, was the said Place called the *P.* and that he at the Time of that supposed Trespass, and long before was likewise seised in his Demesne as of Fee, of and in two Messuages, and 20 Acres of Land, with the Appurtenances in *L.* aforesaid, and that he and all those whose Estates he hath in the said two Messuages and 20 Acres of Land, with the Appurtenances, from the Time beyond the Memory of Man have had, and were accustomed to have Common of Pasture in the said Place, called the *P.* within the aforesaid Bounds and Limits, with all, and all Manner of his Cattle and living Creatures whatsoever, at all Times of the Year; by Virtue of which the said *W. G.* at the Time of the said supposed Trespass, did put his said Cattle into the said Close, in the said Place, called the *P.* in *G.* aforesaid, within the aforesaid Bounds and Limits, to feed on and eat the said Grass there then growing, for the using of the said Common, by the Time aforesaid, as it was lawful for him to do; which Matters are the same breaking of the Close, treading down and consuming, and eating up of the said Grass, whereof the said *E.* doth now above complain. And this he is ready to aver; whereupon (*&c. as in the former Plea.*)

Replication,  
setting  
forth a new  
Assignment.

And the said *E. R.* saith, that he by any Matter before alledged ought not to be precluded from having his said Action against the said *R. B.* and *W. H.* because he saith, that the said Close, and also the Place in which the Trespass, whereof he the said *E.* doth

doth now above complain, was done, are and *Pleas, &c.*  
 at the said Time of that Trespas done, were,  
 as well the said Place, called the *P.* in *G.*  
 aforesaid, as one other Place called the *H.*  
 in *G.* aforesaid; whereupon, for that the said  
 Place they the said *R.* and *W.* have above  
 mentioned, doth not answer to the said Trespas  
 in the said Place, called *The H.* newly  
 as above assigned to be done; he prayeth  
 Judgment and his Damages, by Occasion of  
 that Trespas, to be adjudged unto him. And  
 as to the said Plea of the said *R. B.* above  
 pleaded, the same *E.* saith, that he by any  
 Matter in the said Plea above alledged, ought  
 not to be precluded (barred) from having his  
 said Action against the said *R.* because he  
 saith, that he himself at the Time of the  
 said Trespas done, was seised in his Demesne  
 as of Fee, of and in the Manor of *G.* in *C.*  
 aforesaid, whereof the said Place, called the  
*P.* to the said Time in which the said Trespas  
 was done, was Parcel, until the said *R.*  
 the Day and Year aforesaid, in the said Declaration  
 before specified, did break the Close  
 of him the said *E.* aforesaid, at *G.* aforesaid  
 in the said Place, called the *P.* within the  
 aforesaid Bounds and Limits, did then and  
 there, with his said Cattle, by the Time aforesaid,  
 at up, tread down, and consume his  
 Grass there growing, to the Value of 10 *l.* in  
 Manner and Form as the same *E.* doth above  
 against him complain. *Without this, That Travers.*  
 the said *W. C.* and all those whose Estate he  
 hath in said three Messuages, and 16 Acres  
 of Land, in the Bar of the said *R.* before  
 specified, from the Time beyond the Memory  
 ry

Pleas, &amp;c.

ry of Man hath had, and accustomed to have Common of Pasture of and in the said Place, called the *P. in G.* aforesaid, within the Bounds and Limits aforesaid, with all, and all Manner of his Cattle and Living Creatures whatsoever, at all Times of the Year, as the said *R.* before, in the said Bar hath alledged. And this he is ready to aver; whereupon, for that the said *R.* hath above acknowledged the said Trespass done in the said Place, called the *P. in G.* aforesaid, he prayeth Judgment and his Damages, by Occasion of that Trespass, to be adjudged unto him.

To the second  
Defendant's  
Plea.

Traverse.

And as to the said Plea of the said *W. H.* before pleaded, the said *E.* saith, that he by any Matter in the same Plea before alledged, ought not to be precluded from having his said Action, because he saith, that he himself at the said Time of the said Trespass done, was seised in his Demesne as of Fee of and in the said Manor of *G.* whereof the said Place, called the *P.* is, and at the said Time, in which, &c. was Parcel, until the said *W. H.* on the Day and Year aforesaid, in the said Declaration before specified, enter'd the Close of him the said *E.* in *G.* as aforesaid. *Without this*, that the said *W. H.* and all those whose Estate he hath, in the said two Mesuages, and 20 Acres of Land, with the Appurtenances, from the Time, &c. as above. And this he is ready to prove; whereupon he saith, that he is the worse (&c. as before.)

And

Plea, &amp;c.

Rejoinder

And the said *R. B.* as to any Trespass in the said Place called the *H. in G.* aforesaid, of the new Assignment made, supposed to be done, saith, that he is in *nothing thereof Guilty*; and of this he puts himself on the Country. *And the said E. likewise, &c.*

*And* as to the said Plea of the said *E.* before in replying pleaded, the said *R.* as before, saith, that he and all those whose Estate he hath in the said three Messuages, and 16 Acres of Land, with the Appurtenances, from the Time beyond the Memory of Man hath had, and been accustomed to have *Common of Pasture*, of and in the said Place, call'd the *P. in G.* aforesaid, within the Bounds and Limits aforesaid, with all and all Manner of his Cattle and living Creatures whatsoever, at all Times of the Year, as the said *R.* hath before in his said Bar alledged. And of this he putteth himself upon the Country. *And the said E. likewise, &c.*

*And*  
Issue on both  
Replikations.

And the said *W. C.* as to any Trespass in the said Place called the *H. in G.* aforesaid, of *new Assignment*, supposed to be done, saith, that he is in *nothing thereof guilty*; and of this putteth himself upon the Country; and the said *E.* likewise, &c. And as to the said Plea of the said *W. C.* afore to the replying pleaded, as before saith, that he, and all those whose Estate he hath in the said two Messuages, and two Closes of Pasture, with the Appurtenances, from the Time beyond the Memory of Man hath had, and been accustomed to have all Manner of Pasture, of and in

*And also on*  
the new Assignment.

the

*pleas.* *Et* the said Place called the *Penns* in *G.* afore-  
 said, within the Bounds and Limits afore-  
 said, with all and all Manner of his Cattle  
 and living Creatures whatsoever, in all  
 Times of the Year, as the said *W.* before  
 in his said Bar hath alledged; and of this  
 he putteth himself upon the Country; and  
 the said *E.* likewise, &c. Therefore, as well  
 as to the trying of that Issue, as of the said  
 other Issues above specified. *Let a Jury*  
*awarded.* *Venire come, &c.*

*Touching awarding Venires, Returns of Pos-  
 teas, Special Verdicts, &c. see before, pag. 61,  
 125, 138, 186, 201, 267, 322, 350, 373, &c.*

We should here proceed to give the Reader  
 several other Precedents of *Special Pleadings*,  
 both in this and the other Actions before  
 treated of. But as many of those Particulars  
 are herein already shewn, and a just and  
 adequate Collection under that *Head* would  
 swell this Treatise far beyond its due Extent,  
 I must postpone the *Consideration* thereof to  
 some other Opportunity, and in the mean  
 Time conclude this.



*The E N D.*

